

# Texas Register

Volume 18, Number 56, July 23, 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**Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.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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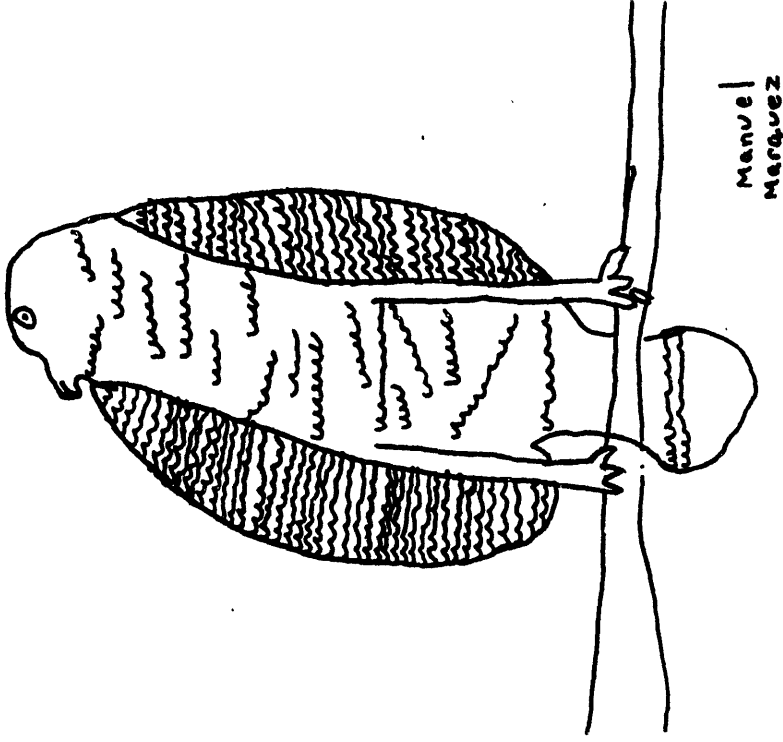


Stephanie Woolf



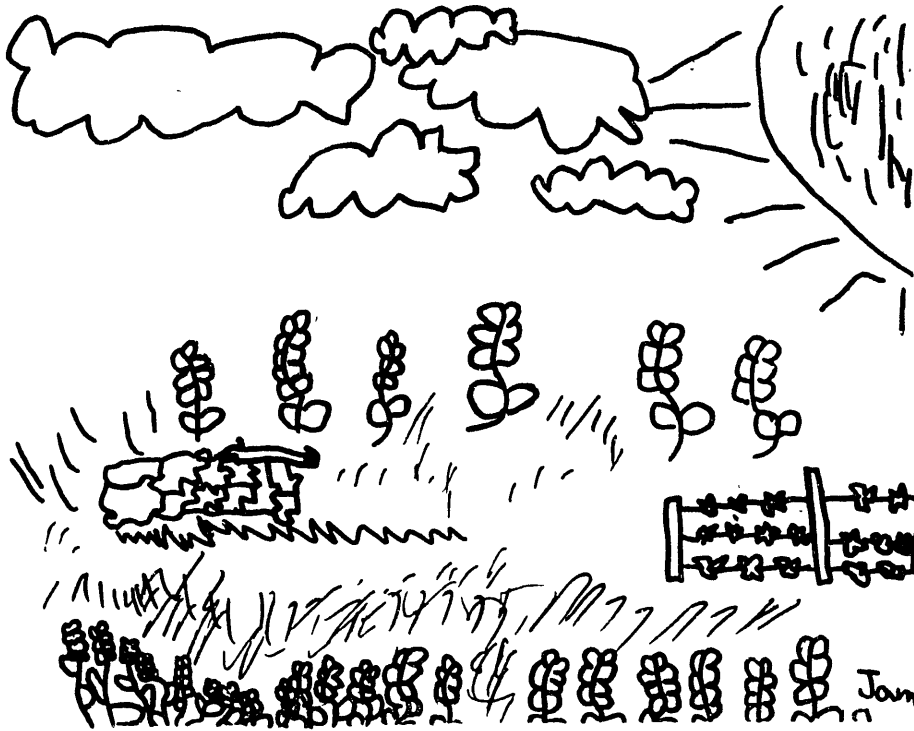
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School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Manuel Marquez  
Grade: 2

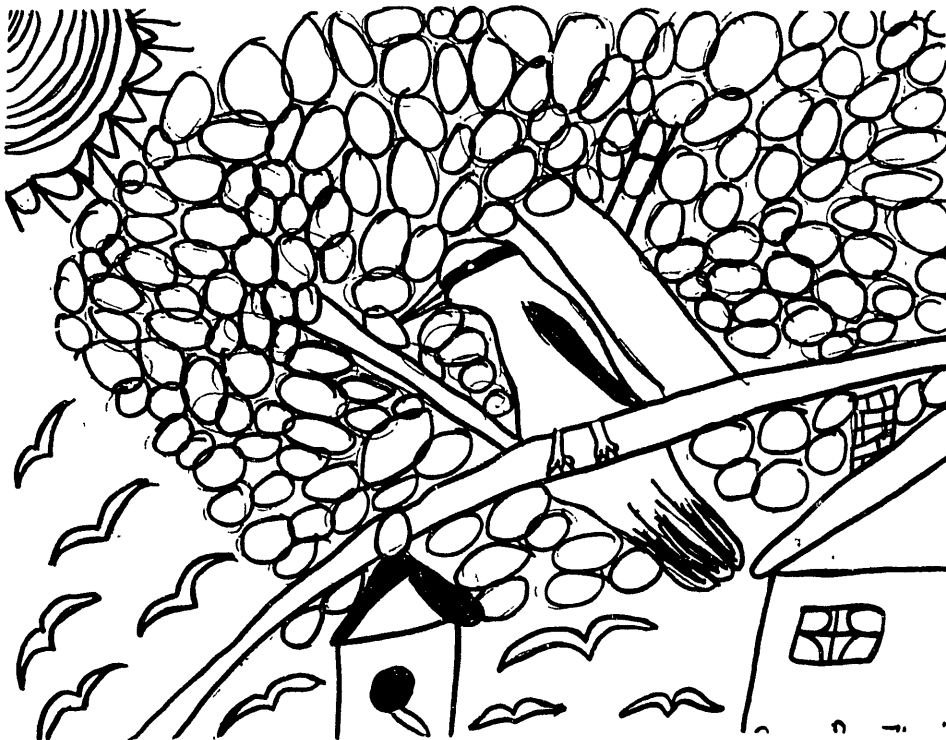
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: James Stephens

Grade: 2

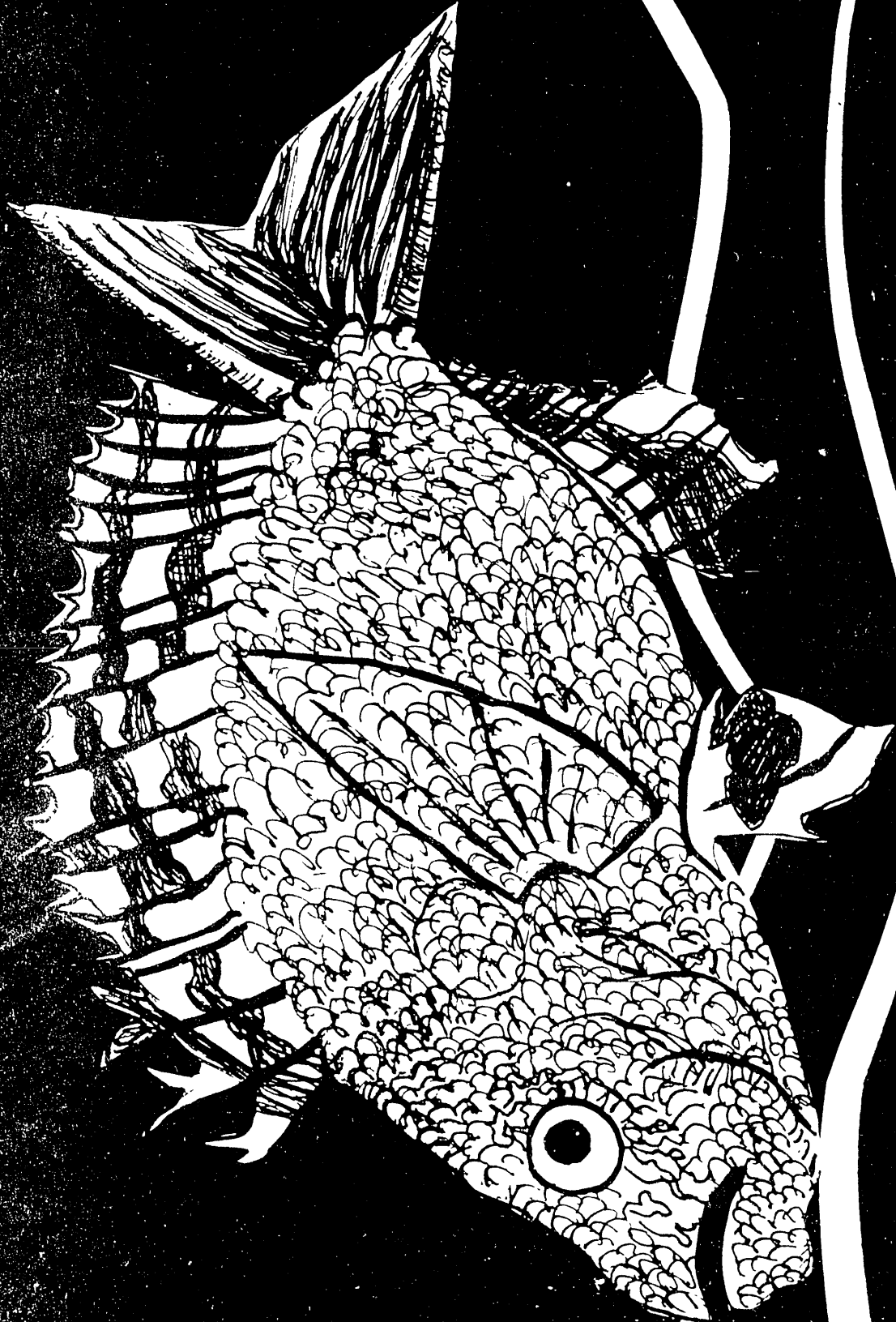
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School: Montgomery Elementary, Carrollton-Farmers Branch ISD

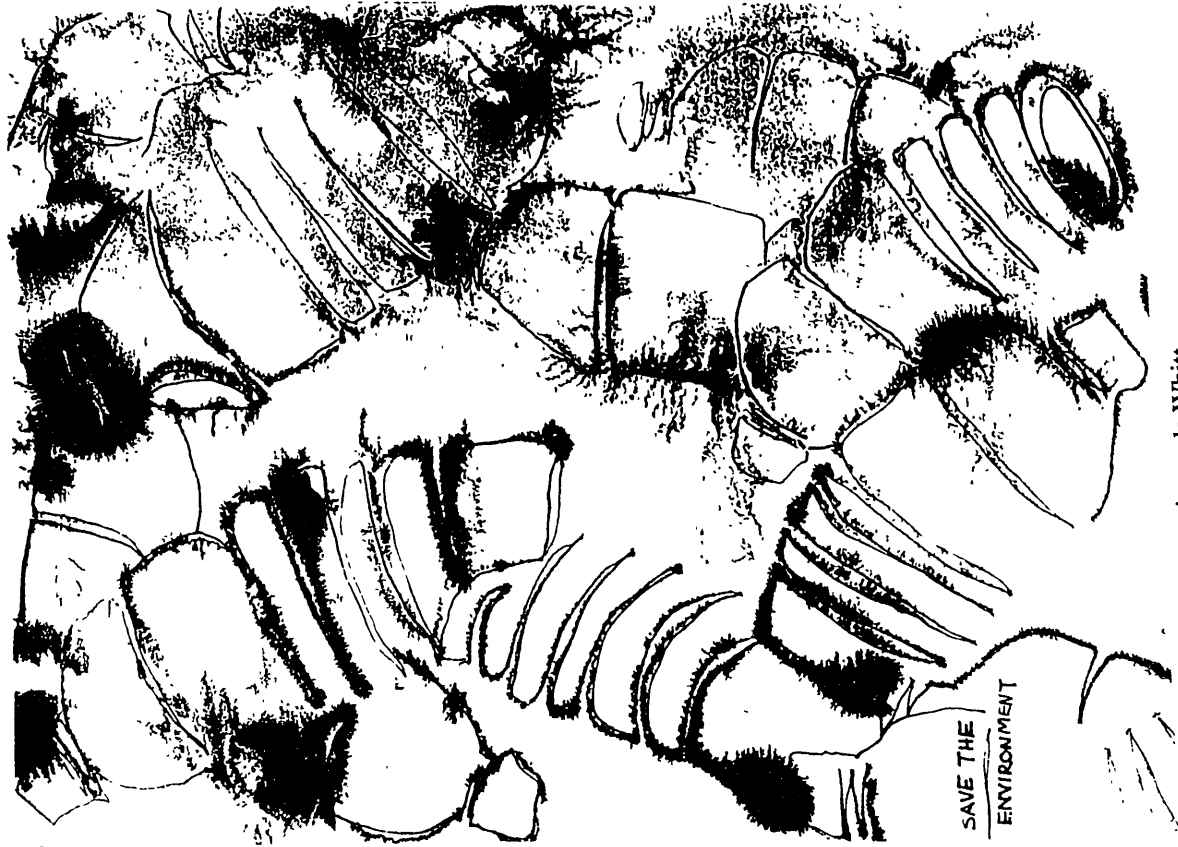


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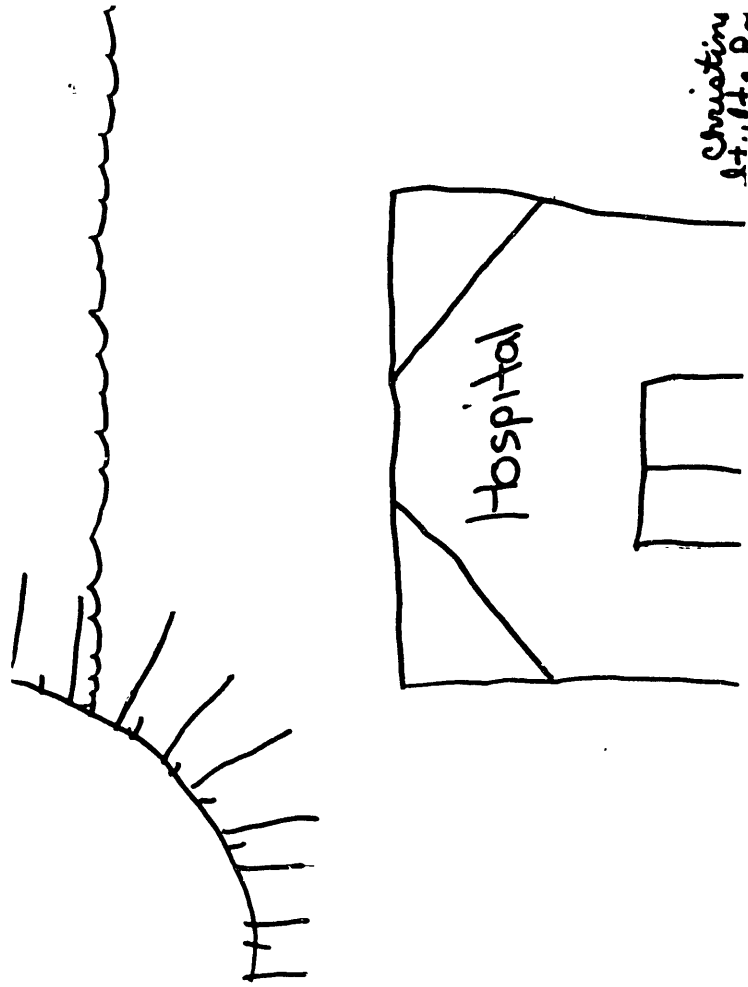




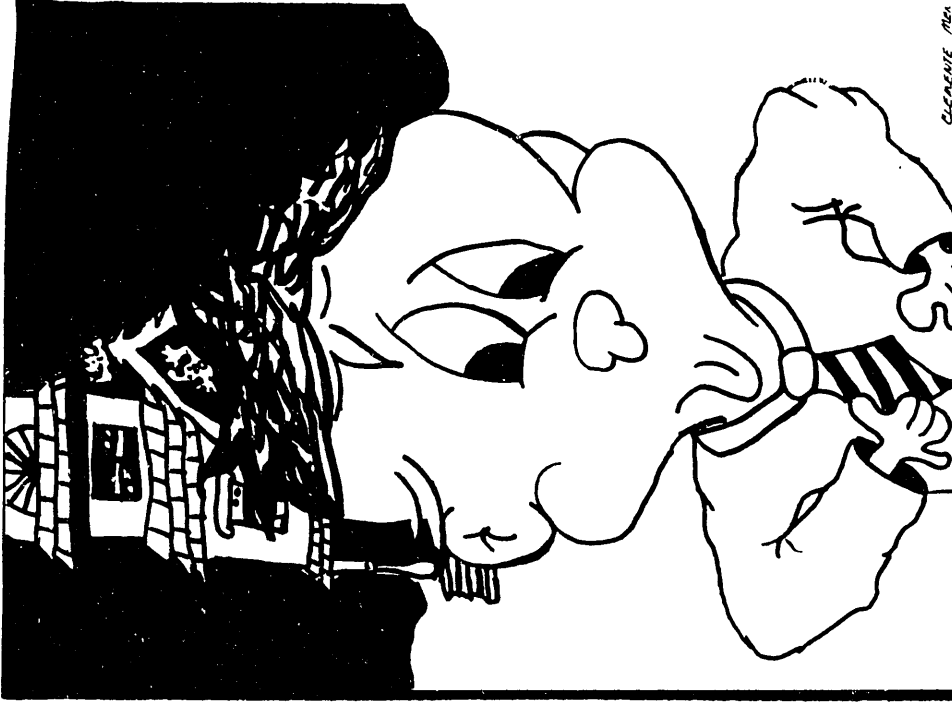
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School: Plano East Senior High, Plano ISD



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School: Cuellar Middle School, Westlaco ISD

# The Governor

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

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## Appointments Made July 12, 1993

To be Chief Justice on the Court of Appeals of the Thirteenth Supreme Judicial District until the next General Election and until his successor shall be duly elected and qualified: Robert J. Seerden, 5050 Moultrie, Corpus Christi, Texas 78413. Justice Seerden will be replacing Chief Justice Paul W. Nue of Corpus Christi, who resigned.

To be Judge of the 24th Judicial District Court, Calhoun, De Witt, Goliad, Jackson, Refugio, and Victoria Counties, until the next General Election and until his successor shall be duly elected and qualified: Joseph P. Kelly, 2103 North Wheeler Street, Victoria, Texas 77901. Mr. Kelly will be replacing Judge Clarence N. Stevenson of Victoria, who is deceased.

## Appointments Made July 14, 1993

To be members of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 1999: Richard G. Arellano, Ph. D., County Road 304, P.O. Box 595, Llano, Texas 78643. Dr. Arellano will be replacing Neal L. Norris, Jr., of Kingsland, whose term expired.

Pix D. Howell, 8613 Montevista Cove, Austin, Texas 78736. Mr. Howell will be replacing Wanda Garner Cash of Kerrville, whose term expired.

I. O. Coleman, Jr., 1525 Harris Street, Wharton, Texas 77488. Mr. Coleman will be replacing Rita Radley of El Campo, whose term expired.

George Cason, Route 1, Box 76, Eagle Lake, Texas 77434. Mr. Cason will be replacing Jack Johnson, Jr., of Eagle Lake, whose term expired.

To be a member of the Lower Colorado River Authority Board of Directors for a term to expire February 1, 1997: Theodor (Teddy) Vanderwerth Boehm, 301 Cedar Circle, Brenham, Texas 77833. MS. Boehm will be replacing J. Randall Grimes of Georgetown, whose term expired.

Issued in Austin, Texas on July 14, 1993.

TRD-9325752

Ann W. Richards  
Governor of Texas





Name: Saul Rodriguez  
School: Saint Edwards State Migrant Program 1993

# Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Opinions

**EAO-158.** Application of the lobby statute to a salesperson's efforts to sell products to a state agency. (AOR-105).

**Summary of Opinion.** A salesperson who attempts to influence state agency purchasing decisions is making a communication to influence administrative action. However, Lobby Rule 40.5(c) exempts from registration a salesperson whose compensation or reimbursement triggers the registration threshold. This rule does not provide an exemption for a salesperson who is required to register as a lobbyist under the expenditure threshold of the lobby statute.

**EAO-159.** The application of the lobby registration law to members of a law firm representing a corporation in connection with the award of a bid and the execution of a contract with the Department of Insurance to be a Special Deputy Receiver (SDR) for a failed insurance company. (AOR-142).

**Summary of Opinion.** A lawyer who receives compensation for communications in connection with a response to a bid solicitation is not required to register as a lobbyist on the basis of such communications.

**EAO-160.** Whether direct communications between an investment banker and state

agency personnel or board members may be lobby communications. (AOR-160).

**Summary of Opinion.** Lobby Rule 40.5(c) provides an exemption from lobby registration under the compensation threshold for a person who is compensated more than \$200 in a calendar quarter to influence a state agency in its selection of an investment banker.

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d, §1.29, to issue advisory opinions in regard to the following statutes: (1) Texas Civil Statutes, Article 6252-9b; (2) Government Code, Chapter 302; (1) Government Code, Chapter 305; (3) Election Code, Title 15; (5) Penal Code, Chapter 36; and (6) Penal Code, Chapter 39.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on July 19, 1993.

TRD-9326001

Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

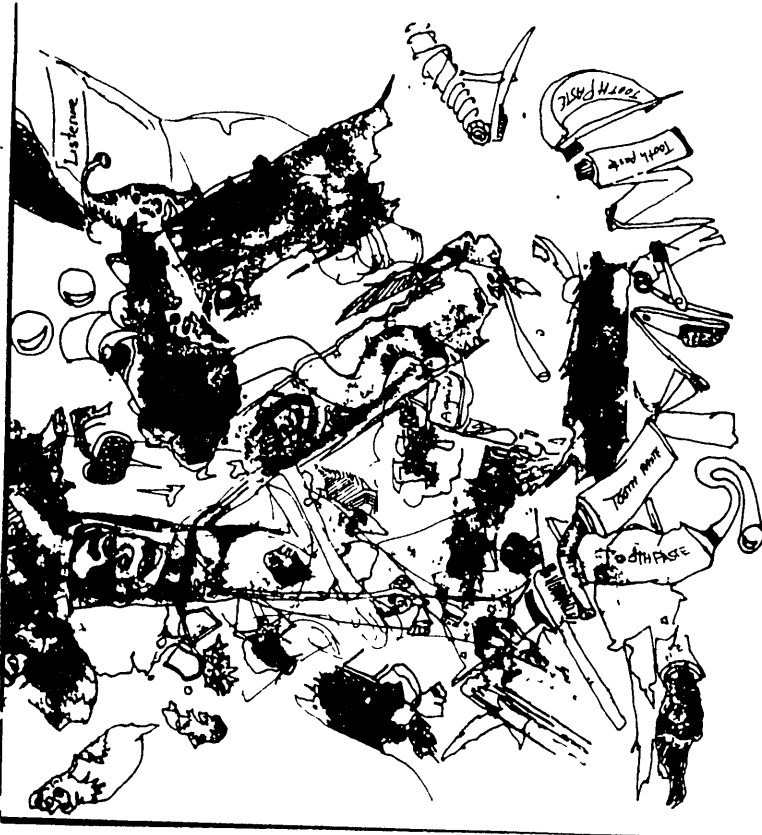
Filed: July 19, 1993

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





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# 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 V. General Services Commission

#### Chapter 115. Facilities Construction and Space Management Division

##### • 1 TAC §115.32

The General Services Commission proposes an amendment to §115.32, concerning emergency leases. The amendment increases the maximum term of emergency leases from 12 months to 24 months and deletes the requirement that the purpose of emergency leases be to provide time for acquiring space in accordance with Article 6.

John Hodges, director of the facilities construction and space management division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Hodges also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be improved ability to collocate and consolidate state offices and services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

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

The amendment is proposed under Texas Civil Statutes, Article, 601b, §6. 12, which provide the General Services Commission with the authority to promulgate rules necessary to administer its functions under Texas Civil Statutes, Article 601b, Article 6.

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

Emergency Lease—A lease negotiated with a private source for a term not to exceed 24 [12] months, as determined by

the Commission [, adequate to allow for the subsequent acquisition of space pursuant to the provisions of Texas Civil Statutes, Article 601b, Article 6].

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 March 30, 1993.

TRD-9326055

Judith M. Porras  
General Counsel  
General Services  
Commission

Earliest possible date of adoption: August 23, 1993

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

## TITLE 7. BANKING AND SECURITIES

### Part IV. Texas Savings and Loan Department

#### Chapter 63. Fees and Charges

##### • 7 TAC §63.5

The Texas Savings and Loan Department proposes new §63.5, concerning fees for examinations of savings and loan associations. The rule will establish the fees to be charged for examination of savings and loan associations by the Department. This section was repealed in January, 1991, and is being replaced by the new section.

James L. Pledger, commissioner, has determined that there will be implications to state government as a result of enforcing or administering the rule. The effect on state government of the rule will be driven by the resumption of examinations which will add an additional \$958,100 to the cost of the Savings and Loan Department for fiscal year 1994. These costs will be offset by the fees charged pursuant to this rule. The estimated additional cost to state government for the first five-year period the rule will be in effect will be \$958,100 in 1994, \$1,222,650 in 1995, \$1,508,650 in 1996, \$1,794,650 in 1997, and \$2,009,150 in 1998. The estimated reduction in cost during the same five-year period will be zero. The estimated increase in revenue during the first five-year period the rule is in effect will be \$958,100 in 1994, \$1,222,650 in 1995, \$1,508,650 in 1996, \$1,794,650 in 1997, and \$2,009,150 in 1998.

There will be no fiscal implications for local governments as a result of enforcing or administering this rule.

The cost of compliance for small businesses will be limited to small savings and loan associations and those costs will vary based upon the fee established by this rule and by the length and complexity of each examination. The cost per examiner per day will be the same for small institutions as for large institutions; however, in most instances, small institutions are assigned fewer examiners than large institutions which result in lower fees for small institutions. Therefore, a specific impact cannot be determined.

Mr. Pledger also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule will be a safer and more fiscally sound State thrift system, as the rule will provide regular examination of savings and loan associations. There is no anticipated economic cost to persons who are required to comply with the proposed section as the rule does not apply to persons.

Mr. Pledger has determined that the proposed rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under Texas Civil Statutes, Article 852a, §8.01(2), which authorize the Finance Commission of Texas to adopt rules relating to fees and procedures for processing, hearing, and deciding applications filed with the Commissioner.

*§63.5. Fee for Examination or Audit.* Each association subject to the Savings and Loan Act shall pay to the savings and loan commissioner an examination fee based upon a per day rate of \$325 for each day during which each examiner is engaged in the examination of the affairs of such association under the provisions of the Texas Savings and Loan Act, §8. 02 and §8.03.

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 15, 1993.

TRD-9325883 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

## Chapter 65. Loans and Investments

### • 7 TAC §65.24

The Texas Savings and Loan Department proposes new §65.24, concerning the local service area investment requirements for state-chartered savings and loan associations. This local service area investment requirement was enacted as part of House Bill 1790, 73rd Legislature, Regular Session. The proposed rule requires that a percentage of local service area deposits be invested in certain types of loans and investments and sets forth the manner in which an association's local service area is determined. The proposed rule also establishes criteria for determining what constitutes qualifying loans and investments.

James L. Pledger, commissioner, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Pledger also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be the increased assurance that savings and loan associations provide housing and housing related credit with their local service area. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Pledger has determined that the proposed rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same and under House Bill 1790, §1.13, which provides the commissioner and the finance commission with the authority to adopt rules relating to investment within an association's local service area.

*§65.24. Local Service Area Investment Requirement.*

(a) A savings and loan association shall maintain an amount equal to at least 15% of its local service area deposits invested in the following categories of assets and investments:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans originated from within the savings and loan association's local service area;

(2) home improvement loans;

(3) interim residential construction loans;

(4) mortgage-backed securities secured by loans from within the savings and loan association's local service area; and

(5) loans for community reinvestment purposes.

(b) The board of directors of each savings and loan association shall approve at least annually the definition of the institution's local service area, which shall incorporate the primary area or areas from which the institution receives savings deposits. At the time a savings and loan association is chartered or converts into a savings and loan association, a savings and loan association may seek approval from the commissioner of the definition of its local service area and unless otherwise agreed to by the institution and the commissioner, the savings and loan association may rely on this definition for the duration of its corporate existence as a savings and loan association.

(c) For purposes of identifying qualifying loans and investments under subsection (a) of this section.

(1) Mortgage-backed securities shall include mortgage-backed bonds, mortgage pass-through securities, collateralized mortgage obligations and such other securities approved by the commissioner which are collateralized by first or second lien residential mortgages.

(2) It shall be the responsibility of each institution to provide such information and evidence necessary to identify particular mortgage-backed securities as being secured by loans from within the institution's local service area such as the originator, the originator/servicer or such other information as may identify the underlying loans as being from the institution's local service area.

(3) Loans and investments described in subsection (a) of this section shall include first and second lien residential mortgage loans, home improvement loans, or residential construction loans originated from within the institution's local service area which are sold by the institution or any subsidiary (including finance subsidiaries)

of the savings and loan association within the preceding 12 months.

(d) Upon application by a savings and loan association, the commissioner may grant a limited term waiver from the requirements of subsection (a) of this section. Such application must include information and evidence that quality loans in the categories described in subsection (a) of this section are not available from within the institution's local service area.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325882 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

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For further information, please call: (512) 475-1350

## Chapter 75. General Administration

### • 7 TAC §75.1

*(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 Savings and Loan Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Savings and Loan Department proposes the repeal of §75.1, concerning the exemption of vehicles owned by the Texas Savings and Loan Department from the requirements of identification inscriptions when used for legitimate agency purposes. The Department no longer owns state vehicles and therefore the chapter and section are unnecessary.

James L. Pledger, commissioner 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. Pledger also has determined that for each year of the first five years the repeal is in effect there will be no public benefit anticipated as a result of enforcing the 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.

Mr. Pledger has determined that the proposed repeal of the rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.



The repeal is proposed under Texas Civil Statutes, Article, 342-114 which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

#### *§75.1. Exempting Vehicles Owned by the Texas Savings and Loan Department from Requirements to Identification Inscriptions.*

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-9325881

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

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## Chapter 75. Applications

The Texas Savings and Loan Department proposes new §§75.1-75.10, concerning Additional Offices §§75.31-75.41, concerning Reorganization, Merger, Consolidation, Purchase and Assumption and Acquisition, §§75.81-75.91, concerning; and Change of Control, and §§75.121-75.127; concerning applications applicable to State savings banks.

These new regulations are part of a comprehensive series of new regulations, designated as Chapters 75, 77, and 79, which implement the Texas Savings Bank Act (the Act), adopted in Senate Bill 396 passed by the 73rd Legislature, Regular Session. The Act authorizes the establishment of a new type of state chartered financial institution known as state savings banks and provides a framework for their regulation and supervision by the Department. State savings banks are regulated by the Department and by the Federal Deposit Insurance Corporation (FDIC). They are primarily housing lenders with powers similar to savings and loan associations; however, the federal regulatory structure applicable to these institutions, unlike savings and loan associations, is more consistent with that applicable to other types of federally insured depository institutions.

James L. Pledger, commissioner, has determined that for the first-five year period the rules are in effect there will be fiscal implications to the State as a result of enforcing and administering the rules. All funds used to administer and enforce the Act will be paid by the state savings bank industry through fees and assessments to the Department.

The effect on state government for the first five-year period the rule is in effect will be an estimated additional cost of \$1,084,000 in 1994; \$1,402,000 in 1995; \$1,746,000 in 1996; \$2,129,000 in 1997; and \$2,322,000 in 1998. The estimated increase in revenue will be \$1,084,000 in 1994; \$1,402,000 in 1995;

\$1,746,000 in 1996; \$2,129,000, in 1997; \$2,322,000 in 1998.

There will be no fiscal implications for local government as a result of enforcing or administering these rules.

Mr. Pledger also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a safer and more fiscally sound State thrift system. Savings Banks will be housing-oriented financial institutions which will provide housing credit to the citizens of Texas. The Act provides a strong system for supervising and regulating state savings banks with broad examination and enforcement powers provided to the Department. These rules also establish requirements that state savings banks maintain minimum levels of investment in loans from the area in which the institution's deposits are derived consistent with the statutory mandates established in the Act.

There will be fiscal implications for small businesses; however, these fiscal implications will only be applicable to small state savings banks. The costs for small savings banks will arise through assessments as well as examination and other fees. Assessments are based upon an institution's asset size and are therefore lower for smaller institutions. Examination fees are based upon a per examiner per day cost for the examiners assigned to an institution's examination and are the same for large and small institutions; however, small institutions are assigned fewer examiners than large institutions which result in lower fees for small institutions.

The anticipated economic costs to persons who are required to comply with these rules as proposed will be limited to those persons seeking a state savings bank charter or seeking to control a state savings bank. As such, these costs will be in the form of application and examination costs associated with obtaining such a charter or an application for a change of control. Otherwise, these rules are applicable to state savings banks and not to persons.

Mr. Pledger has determined that the proposed rules will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

## Charter Applications

### • 7 TAC §§75.1-75.10

The new sections are proposed under Texas Civil Statutes, Article 342-114 which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.04(2) of Senate Bill 396, passed by the Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to fees and procedures for processing, hearing, and deciding applications filed with the Commissioner.

#### *§75.1. Application for Permission to Organize a State Savings Bank.*

(a) Applications for a state savings bank charter shall be filed with the commissioner on forms approved by the commissioner. The application and all required supporting information shall be executed by the proposed incorporators of the proposed savings bank which shall consist of at least five adult residents of this state and shall include all of the information required in the Texas Savings Bank Act, §2.05. The application shall include a request for a corporate title to be approved by the commissioner and included in the savings bank's charter. The application shall include the proposed principal office of the savings bank, the identity and qualifications of the proposed managing officer, and any additional information as may be required sufficiently detailed and comprehensive to enable the commissioner to pass on matters set forth in the Texas Savings Bank Act, §2.11(a).

(b) The commissioner shall furnish approved forms of application and other information to aid in the filing of the application. The form is available from the Department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

(c) No application to incorporate a savings bank shall be approved unless the application and evidence produced at a hearing satisfy the commissioner that the proposed savings bank has received subscriptions for capital stock and paid-in surplus in the case of a capital stock savings bank, or pledges for savings liability and expense fund in the case of a mutual savings bank, in the minimum amount of \$3 million with at least 80% of the total subscriptions being allocated to capital stock or the savings liability and expense account, as applicable. No savings bank with an approved charter shall open or do business as a savings bank until the commissioner certifies that he has received proof satisfactory to him that the amounts of capital stock and paid-in surplus, or the savings liability and expense fund, as set forth in this section, have been received by the savings bank in cash, free of encumbrance.

(d) After the application and its supporting data have been received by the commissioner, he shall make or cause to be made an investigation of the application.

#### *§75.2. Hearing on Charter Application.*

(a) Within 10 days after a complete application has been accepted for filing, the commissioner shall set a date for a hearing on the application, which date shall not be more than 90 days after the date the application is accepted for filing. A decision to approve or deny the application will be rendered in accordance with the timetable

set out in the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

(b) The purpose of the hearing shall be to accumulate a record of all pertinent information, testimony, records, reports, and other data in favor of, or opposed to, the application upon which the commissioner shall make his determination of whether the application should be granted or denied. The commissioner may, in his discretion, make an independent investigation of matters raised in the hearing and, in the event he desires to base his decision on any evidence disclosed by such investigation which is not a part of the official record, he shall make the results of such investigation a part of the official record of the hearing and permit all parties to the hearing an opportunity to be heard in respect thereto by reopening the hearing, if necessary. This shall be done within 30 days after the date of the original hearing.

(c) If any material change occurs in the facts set forth in, or if the applicant files any amendment of, the application filed with the commissioner under the provisions of this chapter, the amendment setting forth such change, together with copies of documents or other material relevant to such change shall be filed with the commissioner no less than 10 days prior to the date of the hearing. Any amendment filed fewer than 10 days prior to the date of the hearing shall be accepted only at the discretion of the hearing officer and the hearing officer may, upon motion of any interested party having filed notice of intention to appear at said hearing, postpone or delay the hearing to a later date if it appears that such amendment materially alters the application on file, provided, however, no additional publication of the date of such hearing shall be required.

*§75.3. Publication of Notice of Charter Application.* The proposed incorporators shall publish at least 20 days before the date of the hearing in a newspaper printed in the English language of general circulation in the county where the proposed savings bank will have its principal office, a notice in the following form:

"Notice is hereby given that application has been made to the Savings and Loan Commissioner of the State of Texas for the approval of a charter for \_\_\_\_\_

\_\_\_\_\_ (corporate title of proposed savings bank) with principal office to be located at \_\_\_\_\_

\_\_\_\_\_ in the city of \_\_\_\_\_

\_\_\_\_\_ County,

Texas.

Notice is further given that a hearing on the application will be held at \_\_\_\_\_

\_\_\_\_\_ on the \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ the \_\_\_\_\_

(location of the hearing), pursuant to authority and jurisdiction granted by the Texas Savings Bank Act, Article \_\_\_\_\_. The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which the commissioner shall determine whether to grant or deny the charter application. The applicants for charter assert that:

(1) the prerequisites to incorporation required by the Texas Savings Bank Act, Chapter 2 have been satisfied;

(2) the character, responsibility, and general fitness of the persons named in the articles of incorporation command confidence and warrant belief that the business of the proposed savings bank will be honestly and efficiently conducted in accordance with the intent and purpose of the Texas Savings Bank Act and that the proposed savings bank will have qualified full-time management;

(3) there is a public need for the proposed savings bank and the volume of business in the community in which the proposed savings bank will conduct its business indicates that a profitable operation is probable; and

(4) the operation of the proposed savings bank will not unduly harm any existing savings bank or state or federal savings and loan association. Any person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is filed with and received by the commissioner at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, and by the applicant's agent named above, at least 10 days prior to the date of such hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location.

*§75.4. Notice to Other Savings Institutions.* The commissioner shall mail notice of such hearing to all state and federal savings banks and savings and loan associations with offices in the county of the proposed location or in any adjoining or adjacent counties within a proximity that might be served or affected by the proposed savings bank.

*§75.5. Filing of Proof of Publication.* At least 10 days before the hearing date, the proposed incorporators shall file proof of publication in the manner provided in §75.3 of this title (relating to Publication of Notice of Charter Application) with the com-

missioner and if 10 days before the hearing date the commissioner has received no written statements of intention to appear in person or by attorney to protest the application from one or more parties, the hearing may be dispensed with by the commissioner. The commissioner shall notify the proposed incorporators at least five days before the date of the hearing in the event the hearing has been dispensed with. When requested by the proposed incorporators, a hearing shall be held on the application even though there are no persons who have indicated a desire to be heard against it.

*§75.6. Time of Decision on Charter Application.* The commissioner shall render his decision within 60 calendar days after the date the hearing is finally closed if the hearing was held in accordance with §75.2 of this title (relating to Hearing on Charter Application), or after the date on which the hearing is dispensed with, as the case may be.

*§75.7. Motions for Rehearing.* In the event a motion for rehearing is filed pursuant to the Texas Savings Bank Act, §12.08(e), as a condition precedent thereto, copies of such motion shall be sent to all parties who have appeared and participated in the hearing, and certification of such fact shall be made to the commissioner at the time of filing said motion; replies to such motions for rehearing must be filed with the commissioner within 25 days after the day the decision or order is entered, and the commissioner's action upon such motion for rehearing shall be taken within 45 days after the date of the original order or decision. If the commissioner's action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the original order or decision.

*§75.8. Identification of Office Site; Temporary Location and Community.*

(a) In connection with any application for charter or for an additional office, the proposed office site shall be identified with such particularity so as to exactly locate it within the community to be served.

(b) The commissioner may approve opening and operating a temporary facility for an approved charter or additional office, provided that such facility is within 1/2 mile radius of the approved permanent site and, further, provided that the operation of the temporary facility will cease immediately upon the permanent facility being completed for occupancy, but in any event no longer than 18 months, unless extended in writing by the commissioner.

(c) In connection with any application for charter or for an additional office,

tion for charter or for an additional office, the term "community" as used in the Texas Savings Bank Act shall be considered to mean that geographical area so situated with respect to the proposed location that persons residing in such area could patronize the proposed office in the ordinary course of their business.

**§75.9. Notice to Applicants.** Within 30 days of receipt of an application for any form of authorization to be granted by the commissioner pursuant to this title, and for which a filing fee is charged pursuant to Chapter 79 of this title (relating to Fees and Charges), the commissioner shall issue a written notice to the applicant informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and that specific additional information is required.

**§75.10. Change of Name.**

(a) A savings bank may not change its name without the prior approval of the commissioner, and a savings bank may not operate under any name which has not been approved by the commissioner. The commissioner may not approve an application by a savings bank to change its name unless he shall have found from the data furnished with the application, the evidence adduced at the hearing and his official records that the proposed change of name meets the applicable requirements of the Texas Savings Bank Act and this chapter, and does not violate other applicable law.

(b) An application for change of name shall be set for hearing by the commissioner and notice given as provided for new charter applications, and the hearing may be dispensed with by the commissioner under the same conditions.

(c) The commissioner shall furnish approved forms of the application for change of name. Copies of the application may be obtained from the Department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

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-9325879 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

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For further information, please call: (512) 475-1350

## Additional Offices

### • 7 TAC §§75.31-75.41

The new sections are proposed under Texas Civil Statutes, Article 342-114 which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.04(2) of Senate Bill 396, passed by the 73rd Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to fees and procedures for processing, hearing, and deciding applications filed with the Commissioner.

#### *§75.31. Establishment and Operation of Additional Offices.*

(a) No savings bank shall establish or maintain an office other than its home office without the prior written approval of the commissioner. A savings bank's home office shall be the place where a savings bank has its headquarters and from where all of its operations are directed. An authorized or approved office of a savings bank shall be the place where the business of the savings bank is conducted, and with the prior consent of the commissioner may include facilities ancillary thereto for the extension of the savings bank's services to the public. Any authorized or approved office of a savings bank shall also mean, with the prior consent of the commissioner, separate quarters or facilities to be used by the savings bank for the purpose of performing service functions in the efficient conduct of its business, but which service functions do not include the acceptance of loan applications or the payment or withdrawal on savings accounts. All offices of a savings bank which are located outside the county of the domicile of its home office shall display a sign which is suitable to advise the public of the type of additional office which is located therein (such as branch, loan, or agency office) and the location of the home office of such savings bank.

(b) All statements of fact tendered to the commissioner in connection with an application for an additional office shall be verified as provided in the Texas Bank Act, §2.05.

(c) The commissioner shall furnish approved forms of application and other information to aid in the filing of applications for additional offices. Such forms are available from the Department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

*§75.32. Types of Additional Offices.* The commissioner may authorize by his approval the establishment and maintenance

of the following types of additional offices by a savings bank.

(1) Branch offices at which the savings bank, through its regularly employed personnel, may transact any business that could be done in the home office.

(2) Loan offices at which the savings bank, through its regularly employed personnel, may receive and process applications for loans and contracts and manage or sell real estate owned by the institution but at which no other business of the savings bank is carried on.

(3) Mobile facilities at which the savings bank, through its regularly employed personnel, may transact any business of the institution which could be done in the home office except that loans, other than loans to borrowers on the security of their savings account shall not be approved at such facility and a detailed record of the transactions at such facility shall be maintained.

(4) Administrative offices at which the savings bank, through its regularly employed personnel, may transact administrative functions of the institution. Such office may be located separate and apart from the location of any other facility of the savings bank. No savings deposits or loan applications may be accepted at an administrative office.

#### *§75.33. Branch Office Applications.*

(a) Each application for permission to establish a branch office shall state the proposed location thereof; the location of other offices of the applicant and other savings banks or savings and loan associations within the community; the need therefor; the personnel and office facilities to be provided; the estimated annual volume of business, income and expense of such office and shall be accompanied by a proposed annual budget of the applying savings bank. Each application for a branch office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as provided in this chapter for new charter applications and the hearing may be dispensed with under the same conditions.

(b) The commissioner may not approve an application for a branch office unless he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing and his official records that:

(1) the operation and condition of the applying savings bank affords no basis for supervisory objection;

(2) the proposed operation will not unduly harm any other savings bank or savings and loan association operating in the community of the proposed branch;

(3) a separate enclosed office area will be provided (such enclosure may be by counters or railing of less than ceiling height);

(4) the proposed branch office will have qualified full-time management;

(5) there is a public need for the proposed branch office and the volume of business in the community in which the proposed branch office will conduct its business is such as to indicate a profitable operation to the savings bank within a reasonable period of time;

(6) the character, responsibility and general fitness of the current directors and officers of the applicant are such as to command confidence and warrant belief that the branch office will be honestly and efficiently conducted in accordance with the intent and purpose of the Act;

(c) the branch office facility will commence operation within a period of 12 months after the date of approval unless an extension is granted, in writing, by the commissioner. No more than one 12-month extension will be approved by the commissioner, unless good cause for such extension is shown. At the end of any approved extension, if the office has not been opened, the authority for such office shall be forfeited.

#### *§75.34. Loan Office Applications.*

(a) Each application for permission to establish a loan office shall state the proposed location thereof; the need therefor; the personnel and office facilities to be provided and the estimated expense of such office, and shall be accompanied by a proposed annual budget of the applying savings bank. Each application for a loan office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications and the hearing may be dispensed with under the same conditions.

(b) The commissioner may not approve an application for a loan office unless he shall have affirmatively found from the data furnished with the application and the evidence adduced at the hearing and in his official records, all of the findings necessary for approval of a branch office, and that the applying savings bank will have adequate income to support the proposed operation.

#### *§75.35. Mobile Facilities.*

(a) Each application for permission to establish a mobile facility shall state the proposed location(s) at which the facility will operate; the need therefor; the personnel and office facilities to be provided and

the estimated expense of such facility, and shall be accompanied by a proposed annual budget of the applying savings bank. Each application for a loan office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications and the hearing may be dispensed with under the same conditions. An application for permission to establish a mobile facility may not be approved unless the commissioner shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, and his official records, all of the findings necessary for approval of a branch office.

(b) Mobile facilities must be operated consistent with the following requirements.

(1) Such facility shall be operated only at locations approved by the commissioner, each of which shall at all times be appropriately identified at the site and on the facility, within 100 miles of the institution's home office.

(2) The mobile facility shall be established and operated at two or more locations, each of which at the time of filing of the application shall be more than 10 miles from the locations of any home or branch office of any other savings bank or savings and loan association.

(3) Any such facility shall be open for business at the same location on the same day or days of each week (established holidays excepted) but shall not be consecutive days, during such hours aggregating a total of not less than 4 hours a day as the institution's board of directors may from time to time determine.

(4) The mobile equipment used in the establishment and operation of such facility shall not remain at the site except for business hours approved by the savings bank. Further, each applicant shall show that adequate safeguards for the security protection of such mobile facility and its content will exist. The commissioner may require further safeguards if in his opinion the proposed safeguards be inadequate.

(5) Operation of such facility shall not be conducted at any location after the expiration of such period of time as the commissioner shall prescribe which shall not exceed three years except with subsequent approval of the commissioner.

#### *§75.36. Designation as and Exemption for Supervisory Sale.*

(a) Designation as a Supervisory Sale. The commissioner may designate a purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase when:

(1) the commissioner has placed the selling institution under voluntary supervisory control or under conservatorship; or

(2) the commissioner has determined that the selling institution is in an unsafe condition; or

(3) the Federal Deposit Insurance Corporation has determined, and notified the commissioner, that one or more of the grounds specified in the Federal Deposit Insurance Act, for appointment of a conservator or receiver, exist with respect to the selling institution, or the proposed transaction is necessary to prevent the failure or possible failure of the selling institution. For purposes of this section, the term "unsafe condition" shall mean that the selling institution is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules or regulations, or to any unsafe or unsound condition to transact business in that there has been a substantial reduction of its net worth; or that the institution and its directors and officers have violated any material condition of its charter or bylaws, the terms of any order issued by the commissioner or any agreement between the institution and the commissioner; or that the institution, its directors, or officers have concealed or refused to permit examination of the books, papers, accounts, records and affairs of the institution by the commissioner or other duly authorized personnel of the Department; or any other conditions affecting the institution which the commissioner and the board of directors of the institution agree place the institution in an unsafe condition.

(b) Exemption for a Supervisory Sale. Whenever the commissioner designates the purchase of additional offices and/or assets by a savings bank from another financial institution to be a supervisory purchase, the sections relating to the contents of applications for additional offices and the findings necessary for approval, §§75.31-75.41 of this title (relating to Additional Offices), shall not be applicable, and such purchase shall be effected in accordance with this section.

#### *§75.37. Remote Service Units.*

(a) Remote service unit is an information-processing device, to be operated off-premises of an approved savings bank office, including associated equipment structures and systems, by which information relating to financial services rendered the public is stored and transmitted simultaneously or otherwise to a financial institution. The term includes any facility which for activation and account access requires the use of an activator and personal identifier in the possession of the user and in-

cludes on-line computer terminals, and on-line cash dispensing machines and automated teller machines. A remote service unit is not an office of the savings bank within the meaning of the Texas Savings Bank Act, §2.14.

(b) Each application for permission to establish or participate in the use of a remote service unit shall state the proposed location at which the facility will be established; the need therefor; the estimated expense of such unit and shall be accompanied by a proposed annual budget of the applying savings bank. Each application for a loan office shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time as herein provided for new charter applications and the hearing may be dispensed with under the same conditions. The application shall include the following:

(1) the location or address of the proposed remote service unit(s) as well as the address of the existing facility or agency in the county;

(2) the extent of participation or nonparticipation with other financial institution(s);

(3) a detailed account of proposed security measures;

(4) an estimated cost to the association to equip and maintain the operations of the proposed remote service unit; and

(5) such other information as may be required by the commissioner.

(c) the commissioner may approve an application for a remote service unit if he has affirmatively found from data furnished with the application, his official records, and the evidence adduced at any hearing, that security of the association's funds and that of its account holders will be maintained and the proposed service will be a substantial convenience to the public.

(d) Upon receipt of the application the commissioner shall submit for publication in the *Texas Register* a summary of details pertaining to such application. Written protest may be filed within 10 days following notice, as provided in this chapter. The commissioner may dispense with a hearing.

#### §75.38. *Change of Office Location.*

(a) A savings bank may not move any office beyond its immediate vicinity without prior approval of the commissioner. Immediate vicinity is the area included within a radius or distance of 1 mile from the present location of such office. Any relocation within the immediate vicinity as defined in this section will require the approval of the commissioner, if the office to

be relocated has not been open for business at its present location for more than 2 years.

(b) Each application for such approval shall state the exact proposed new location of the office to be relocated and shall be supported with statements, exhibits, maps, and other data, properly verified under oath, which shall be sufficiently detailed and comprehensive to enable the commissioner to pass upon the factors for approval. Such supporting data shall also include estimates of the cost of removal to and maintenance of the new location.

(c) The commissioner may not approve an application to move or relocate any office of a savings bank, unless he shall have found from the data furnished with the application, the evidence adduced at the hearing, and his official records, all of the findings necessary for approval of a branch office.

(d) An application to move an office location shall be set for hearing by the commissioner and notice given as provided for new charter applications, and the hearing may be dispensed with by the commissioner under the same conditions.

§75.39. *Temporary Closing of Additional Offices.* In the event a savings bank closes any additional office of any type on a temporary basis, said office must be reopened within 12 months or less. In the event such office is not reopened within the allotted 12-month period, such authorization for the office shall be forfeited. Written notice of any temporary closing shall be furnished to the commissioner within 10 days of such closing, and no additional office shall be deemed to have reopened until the commissioner receives written notification of such reopening.

#### §75.40. *Agencies.*

(a) Applications for permission to appoint an agent or establish an agency described in this chapter shall state the proposed location thereof; the need therefor; the functions to be performed; the personnel and facilities to be provided; and such other information which clearly shows the nature of the proposed operation; and shall be set for hearing by the commissioner and notice given as provided for new charter applications and the hearing may be dispensed with by the commissioner under the same conditions.

(b) A savings bank may, with the prior written approval of the commissioner, appoint an agent or agents, whose functions shall be limited to the receipt of applications for loans, and the servicing of loans and contracts. The commissioner may not approve such an application unless he shall have found from the data furnished with the

application, the evidence adduced at the hearing, and his official records all of the findings necessary for approval of a branch office. Agency is any lawful arrangement whereby any business of a savings bank is conducted other than by regularly employed personnel of the institution. An agent appointed under the authority of this section shall not receive payments on new or established savings accounts, or pay out withdrawals of monies from savings accounts, nor shall he perform any duties for the savings bank other than those specifically authorized in this section.

(c) Agencies for receiving savings for and on behalf of a savings bank, including applications for new accounts, in addition to performing the functions allowed in subsection (b) may be established with the prior approval of the commissioner. The commissioner may not approve such an application unless he shall have found from the data furnished with the application, the evidence adduced at the hearing, and his official records all of the findings necessary for approval of a branch office, and that the procedure to be followed in regard to the safeguarding of funds belonging to the applying institution is adequate.

(d) In the case where an agency in lawful existence on the effective day of these rules or any agency established hereunder is terminated by the death or resignation of the agent or for any other reason (except by order of the Commissioner for cause), the only matters required to be presented to the commissioner in connection with continued operation of a similar agency under a new agent are those set forth in subsection (c) of this section, and no hearing shall be required for permission to continue the agency operation with a new agent.

(e) To the extent permitted by the law of the state or territory in question, and subject to this chapter, a savings bank may appoint an agent or establish the type of agencies described in this chapter in any state or territory of the United States. Each application for permission to appoint or establish such an agency shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the agency, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements have been satisfied. Each such application shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time provided in this chapter for similar applications for agencies in this state. The commissioner may not approve such an application unless he shall have affirmatively found from the data furnished with the application the evidence adduced at the hear-

ing, and his official records, that all requirements of this chapter have been met and that all applicable requirements of the laws of the state or territory in question have been met.

(f) Nothing in this chapter shall prevent a savings bank from using as its agent for any purpose any institution which is insured by the Federal Deposit Insurance Corporation.

**§75.41. Offices and Remote Service Units in Other States or Territories.** To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may establish branch offices, loan offices and remote service units in any state or territory of the United States. Each application for permission to establish such a branch office, loan office, or remote service unit shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state or territorial regulatory authority approving the office or unit, or other evidence satisfactory to the commissioner that all state or territorial regulatory requirements had been satisfied. Each such application shall be set for hearing, if applicable, notice given, hearing held, if applicable, and decision reached in the same manner and within the time provided in this chapter for similar applications for offices or units in this state. The commissioner may not approve such an application unless he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, if applicable, and his official records that all requirements of this chapter applicable to the office or unit have been met, and that all applicable requirements of the laws of the state or territory in question have been met.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325878 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

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**Reorganization, Merger, Consolidation, Conversion, Purchase and Assumption and Acquisition**

• 7 TAC §§75.81-75.91

The new sections are proposed under Texas Civil Statutes, Article 342-114 which provide

the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4. 04(2) of Senate Bill 396, passed by the Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to fees and procedures for processing, hearing, and deciding applications filed with the Commissioner.

**§75.81. Filing of Plan.** Any savings bank seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction shall do so pursuant to a plan adopted by the board of directors and filed with the commissioner as a part of an application for approval.

**§75.82. Form and Content of Application.**

(a) The application for approval of the plan shall be titled "Application to Reorganize, Merge and/or Consolidate" and shall contain: proof that the plan was adopted by the board of directors of each institution involved; documentation showing that the plan has been approved by each institution by a majority of the total vote the members or shareholders of each are entitled to cast; a statement that the corporate continuity of the resulting institution shall possess the same incidents as that of a savings bank which has converted in accordance with the Texas Savings Bank Act; and a statement identifying the home office of the resulting institution. A true copy of the plan, as adopted, shall be filed as part of the application. All documents and their contents shall be subscribed and sworn to by an officer of each institution involved under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

(b) The commissioner shall furnish approved forms of application. The forms are available from the Department at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

**§75.83. Notice and Hearing.** Each application will be set to be heard within 90 days of filing. Notice will be sent by mail to the institution involved and those savings and loan associations and savings banks with offices in the same counties as any of the offices of the applying savings bank. If, from the evidence adduced at hearing, the commissioner finds that the applicable criteria for approval of the application set forth in the Texas Savings Bank Act are met, he shall enter an order approving the plan.

**§75.84. Publication.** The institutions involved in a plan must publish a notice at

least 20 days before the date of hearing in a newspaper or newspapers of general circulation in each county or counties where said institutions have offices, and file proof of such publication with the commissioner at least 10 days prior to hearing. The form of notice shall be as follows:

"Notice is hereby given that application has been made to the Savings and Loan Commissioner of Texas by (institutions) for approval to (reorganize, acquire, merge and/or consolidate or engage in a purchase and assumption agreement) pursuant to §3.03 of the Texas Savings Bank Act. A plan of (reorganization, acquisition, merger and/or consolidation) and related documents has been filed with the commissioner.

Notice is further given that a hearing on this application has been set for (date) at (time) in (place) pursuant to authority and jurisdiction granted by Texas Savings Bank Act. The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which record the commissioner shall determine whether to grant or deny the application.

The applicants assert that the plan of (reorganization, acquisition, merger and/or consolidation) meets the criteria for approval set forth in the Texas Savings Bank Act. Any person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is filed with and received by the commissioner at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, and by the applicant's agent named above, at least 10 days prior to the date of such hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location.

ISSUED this (date) at Austin, Travis County, Texas."

**§75.85. Time of Decision.** The commissioner shall render his decision within 60 days after the date the hearing is closed.

**§75.86. Appeal.** Any appeal of an order or action of the commissioner shall be made pursuant to the Administrative Procedure and Texas Register Act, §16 (Texas Civil Statutes, Article 6252-13a), and the Texas Savings Bank Act, §§12.08 and §12.09.

**§75.87. Designation as and Exemption for Supervisory Merger.**

(a) The commissioner may designate a merger to be a supervisory merger when:

(1) the commissioner has placed one or more of the savings banks involved

under voluntary supervisory control or under conservatorship pursuant to the Texas Savings Bank Act; or

(2) the commissioner has determined that one or more of the savings banks involved is in an unsafe condition; or

(3) the Federal Deposit Insurance Corporation has determined, and certified to the commissioner, that the merger of one or more of the institutions involved is necessary to prevent the failure or possible failure of the said institution.

(b) For purposes of this section, unsafe condition shall mean that the savings bank (or savings banks) is insolvent or is in imminent danger of insolvency, or that there has been a substantial dissipation of assets or earnings due to any violation or violations of applicable law, rules, or regulations, or to any unsafe or unsound practice or practices; or that the savings bank is in an unsafe and unsound condition to transact business in that there has been a substantial reduction of its net worth; or that the savings bank and its directors and officers have violated any material conditions of its charter or bylaws, the terms of any order issued by the commissioner, or any agreement between the savings bank and the commissioner; or that the savings bank, its directors, and officers have concealed or refused to permit examination of the books, papers, accounts, records, and affairs, of the savings bank by the commissioner or other duly authorized personnel of the Department; or any other condition affecting the savings bank which the commissioner and the board of directors of the savings bank agree place the savings bank in an unsafe condition.

(c) When the commissioner designates a merger to be a supervisory merger, the provisions of this chapter relating to reorganization, merger and/or consolidation, §§75.81-75.86 of this title (relating to Filing of Plan; Form and Content of Application; Notice and Hearing; Publication; Time of Decision; and Appeal), shall not be applicable, and the merger shall be effected pursuant to this section.

*§75.88. Acquisitions Involving Savings Banks in Other States or Territories.* To the extent permitted by the laws of the state or territory in question, and subject to this chapter, a savings bank may acquire, by merger or purchase of stock, a financial institution incorporated under the laws of another state. Each such application shall comply with the applicable requirements of this chapter, and shall include a certified copy of an order from the appropriate state regulatory authority approving the merger or acquisition, or other evidence satisfactory to the commissioner that all state regulatory requirements have been satisfied. Each such

application shall be set for hearing, notice given, hearing held, and decision reached in the same manner and within the time provided in this chapter for a similar application involving another savings bank in this state. The commissioner shall approve such an application if he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing, and his official records, that all requirements of this chapter applicable to the proposed merger or acquisition have been met, and that all applicable requirements of the laws of the state in question have been met.

*§75.89. Conversion to Another Financial Institution Charter.*

(a) The commissioner may authorize any savings bank subject to this title to convert into another type of financial institution subject to applicable law and regulation relating to the type of institution into which the savings bank seeks to convert.

(b) A conversion by a savings bank may be initiated by the adoption of a resolution by a majority vote of the members or stockholders of a savings bank entitled to vote at an annual meeting or special meeting called to consider the conversion. The resolution must declare that the savings bank shall be converted. A copy of the minutes of the proceedings of the meeting of the stockholders or members, verified by affidavit of the secretary or an assistant secretary, must be filed in the office of the commissioner within 10 days after the date of the meeting. In addition, the following supporting information shall be submitted:

(1) a copy of the proposed articles of incorporation and bylaws for the new federal savings bank;

(2) estimates of the cost of conversion, exclusive of any application or filing fees;

(3) a statement of the reasons or need for conversion; and

(4) a statement of the savings bank's proposed plans for operation following conversion, including a description of any material changes in the savings bank's organizational structure and management and in the services to be provided by the savings bank to the public following conversion.

(c) Within 10 days after the date of receipt of an application to convert and a copy of the minutes, the commissioner shall either consent to the conversion by written order or set a hearing to consider whether the proposed conversion complies with the statutory and regulatory conditions. The commissioner may approve a conversion if he finds that:

(1) the conversion will not substantially lessen competition or be in restraint of trade and will not result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or savings bank industry in any part of the state, unless the anti-competitive effects of the proposed conversion are clearly outweighed in the public interest by the probable effect of the conversion in meeting the convenience and needs of the community to be served;

(2) the proposed conversion will not cause undue harm to the public interest or to any other existing financial institution; and

(3) the proposed conversion is not contrary to the best interests of the savers, depositors, creditors, and stockholders of the converting savings bank and of the public in general.

(d) If a hearing is held, it must be held within 25 days after the date of the filing of the conversion application unless a later date is agreed to by the savings bank and the commissioner. The commissioner or a hearing officer designated by the commissioner shall conduct the hearing as a contested case in compliance with the administrative procedure act, except that a proposal for decision may not be made and a final decision or order must be rendered by the commissioner within 15 days after the date of the close of the hearing. If the commissioner denies an application to convert, the Administrative Procedure and Texas Register Act governs a motion for rehearing and available judicial review.

(e) If the commissioner consents to the conversion, the savings bank, within 3 months after the date of the commissioner's written order, shall consummate the conversion in the manner prescribed and authorized by the applicable laws of this state or the United States. A copy of the charter issued to the new financial institution by the appropriate banking agency or the certificate showing the organization of the new financial institution, certified by the secretary or assistant secretary of the appropriate banking agency, must be filed with the commissioner. Failure to file the charter or certificate with the commissioner does not affect the validity of the conversion.

(f) On the grant of a charter by the appropriate banking agency, the savings bank receiving the new charter ceases existence as a savings bank incorporated and is not subject to the supervision and control of the commissioner.

*§75.90. Conversion into a Savings Bank.*

(a) The commissioner may authorize any financial institution to convert itself

into a savings bank in a manner consistent with the provisions of applicable law and regulations of the institution.

(b) In order to obtain such authorization, the converting savings bank must adopt, by a majority vote of the members or shareholders of the financial institution entitled to vote at any annual or special meeting called to consider such conversion, a resolution declaring that the savings bank shall be so converted, which resolution, verified by affidavit of the secretary or an assistant secretary, shall be filed with the commissioner and mailed to the appropriate banking agency within 10 days after the date of its adoption. At the meeting to vote on a conversion to a domestic savings bank, the members or stockholders shall also vote on the directors of the savings bank. The proposed directors shall execute two copies of an application for certificate of incorporation as provided in the Texas Savings Bank Act, Chapter 2. Each proposed director shall sign and acknowledge the application for certificate of incorporation as a subscriber to the savings bank and shall sign and acknowledge the proposed bylaws as an incorporator of the savings bank.

(c) The commissioner on receipt of the application and verified copy of the minutes shall conduct an examination of the financial institution seeking conversion. Following the examination, the commissioner shall approve the conversion without a hearing if the commissioner determines that the converting financial institution is in sound condition and meets all standards, conditions, and requirements of the Texas Savings Bank Act, Chapter 2 or relevant rules adopted by the commissioner and the finance commission. On approval of the conversion, there shall be inserted a paragraph preceding the testimonium clause in the certificate of incorporation stating that the savings bank is incorporated by conversion from another financial institution.

(d) An applicant is entitled to a hearing under the Administrative Procedure and Texas Register Act if the commissioner denies an application to convert and a written request for a hearing is delivered to the commissioner within 10 days after the date of denial. A hearings officer designated by the commissioner shall hold the hearing. Within 30 days after the date the hearing is completed, the commissioner shall enter a final order either approving or denying the application. An applicant has the right to appeal a final order to a district court of Travis County with the commissioner named as defendant. The commissioner is not required to file an appeal bond in any cause arising under this section. Filing an appeal under this section does not stay an order of the commissioner.

#### §75.91. Mutual to Stock Conversion.

(a) Applications for conversion from a mutual to stock form of ownership shall be filed with the commissioner on forms approved by the commissioner. The application for mutual to stock conversion shall include:

- (1) a plan of conversion;
- (2) amendments to the savings bank's articles of incorporation and bylaws;
- (3) a copy of the proxy and soliciting materials to be used; and
- (4) such other information the commissioner may require.

(b) The plan of conversion shall provide:

(1) a comprehensive description of the nontransferable subscription rights received each eligible accountholder, including details on oversubscriptions;

(2) that the shares of the converting savings bank be offered to persons with subscription rights and management, in that order, and that any remaining shares shall be sold either in a public offering through an underwriter or directly by the converting savings bank in a direct community offering;

(3) that a direct community offering by the converting savings bank shall give a preference to natural persons residing in the counties in which the savings bank has an office;

(4) that the sale price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with paragraph (1) of this subsection and shall specify the underwriting and/or other marketing arrangements to be made;

(5) that the conversion must be completed within 24 months from the date the savings bank members approve the plan of conversion;

(6) that each savings accountholder of the converting savings bank shall receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of such accountholder's savings account or accounts in the converting savings bank;

(7) for an eligibility record date;

(8) that expenses incurred in the conversion shall be reasonable;

(9) that the converting savings bank shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the savings bank;

(10) that the proxies held with respect to voting rights in the savings bank will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion; and

(11) the amount of the deposit of an accountholder shall be the total of the deposit balances in the accountholder's savings accounts in the converting savings bank as of the close of business on the eligibility record date. The plan of conversion may provide that the total deposit balances of less than fifty dollars (or any lesser amounts) shall not be considered for purposes of paragraph (6) of this subsection.

(c) A plan of conversion shall be adopted by not less than two-thirds of the savings bank's board of directors.

(d) Upon determining that an application for conversion is properly executed and is not materially incomplete, the commissioner will advise the savings bank, in writing, to publish a notice of the filing of the application. Promptly after receipt of the advice, the savings bank shall prominently post the notice in each of its offices and publish the notice in a newspaper printed in the English language and having general circulation in each community in which an office of the savings bank is located, as follows:

Notice of Application for Permission to Convert to a

#### Stock Savings Bank

"Notice is hereby given that, pursuant to Sections 3.01 and 3.03 of the Texas Savings Bank

Act, \_\_\_\_\_ (Applicant) has filed an application with the Texas Savings and Loan Commissioner for approval to convert a Texas chartered permanent stock savings bank. The proposed plan of conversion has been filed with the commissioner.

Notice is further given that a hearing on this application has been set for \_\_\_\_\_ (Date) at \_\_\_\_\_ (Time) in \_\_\_\_\_ (Place) pursuant to the authority and jurisdiction granted by the Texas Savings Bank Act.

The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which the commissioner shall determine whether to grant or deny the application. The applicants assert that the plan of conversion meets the criteria for conversion set forth in the Texas Savings Bank Act.

Any person intending to appear and to participate in the hearing on this application may do so only if written notice of such intention is filed with and received by the commissioner at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, at least 10 days prior to the date of such



hearing. Such notice shall include the docket number of the application. If a protest is filed, the hearing on the application may be continued to a later date at the same location.

ISSUED this \_\_\_\_\_ (Date) at Austin, Travis County, Texas."

(e) Promptly after publication of the notice or notices prescribed in subsection (d) of this section, the savings bank shall file one copy of the notice together with an affidavit of publication from each publisher with the commissioner.

(f) Following approval of the application for conversion by the commissioner, the plan of conversion shall be submitted to the members at an annual or special meeting and the plan shall be approved, in person or by proxy, by at least a majority of the total outstanding votes of the members of the savings bank.

(g) No offer to sell securities of a savings bank pursuant to a plan of conversion may be made prior to commissioner's approval of the:

- (1) application for conversion;
- (2) proxy statement; and
- (3) offering circular.

(h) within 45 days.

(1) Of the date of the mailing of the subscription form, the subscription rights must be exercised.

(2) After the last day of the subscription period, the sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed.

(i) The converting savings bank shall pay interest at not less than the pass-book rate on all amounts paid in cash or by check or money order to the savings bank to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the savings bank until the conversion is completed or terminated.

(j) For the purpose of this rule, the public offering and a direct community offering shall be deemed to commence upon the declaration of effectiveness by the commissioner of the final offering circular.

(k) The commissioner may grant a written waiver from any requirement for this rule.

(l) For the purposes of this rule.

(1) The term "control" means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) The term "person" includes an individual, a group acting in concert, a corporation, a partnership, a savings bank, a trust, any unincorporated organization, or a government or political subdivision thereof.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325877

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

### Change of Control

#### • 7 TAC §§75.121-75.127

The new sections are proposed under Texas Civil Statutes, Article 342-114 which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4. 04(2) of Senate Bill 396, passed by the Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to fees and procedures for processing, hearing, and deciding applications filed with the Commissioner.

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

**Affiliate**—An affiliate of, or person affiliated with, a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the person specified.

**Affiliated person**—

(A) a director, officer, or controlling person of such savings bank;

(B) a spouse of a director, officer, or controlling person of such savings bank;

(C) a member of the immediate family of a director, officer, or controlling person of such savings bank who is a director or officer of any subsidiary of such savings bank or of any holding company affiliate of such savings bank;

(D) any corporation or organization (other than the savings bank or a corporation or organization through which

the savings bank operates) of which a director, officer, or controlling person of such savings bank:

(i) is an officer;

(ii) is a general partner;

(iii) is a limited partner who, directly or indirectly, either alone or with his spouse and the members of his immediate family who are also affiliated persons of the savings bank, owns an interest of 10% or more in the partnership (based on the value of his contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, owns an interest of 25% or more in the partnership; or

(iv) directly or indirectly, either alone or with his spouse and the members of his immediate family who are also affiliated persons of the savings banks, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members who are also affiliated persons of the savings bank, 25% or more of any class of equity securities; and

(E) any trust or other estate in which a director, officer, or controlling person of such savings bank or the spouse of such person has a substantial beneficial interest or as to which such person or his spouse serves as trustee or in a similar fiduciary capacity.

**Commissioner**—The Texas Savings and Loan Commissioner.

**Control** (including the terms controlling, controlled by, and under common control with)—The possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a savings bank by either direct or indirect means. Control shall be deemed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 25% or more of the voting securities of a savings bank. The commissioner may determine, based upon specific written findings of fact to support such determination and an opportunity for public hearing, that control exists in fact, where a person exercises directly or indirectly, either alone or pursuant to an agreement with one or more other persons, such a controlling influence over the management or policies of a savings bank as to make it necessary or appropriate in the public interest and for the protection of the account holders of a savings bank that the person be deemed to control the savings bank. There shall be a presumption of con-

trol if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds irrevocable proxies representing 10% or more of the voting securities of a savings bank. Such person may, by application to the commissioner, seek to rebut that control presumption.

**Issuer**—The savings bank which has issued the security in question.

**Person**—An individual, corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

**Savings bank**—Shall include all savings banks organized or chartered under the laws of this state. For purposes of this chapter, savings bank shall include any other person controlling a savings bank.

**Voting security**—Shall include any security convertible into or evidencing a right to acquire a voting security.

**§75.122. Acquisition of a Savings Bank.** The following procedures shall be followed when a person desires to acquire control of a savings bank.

(1) No person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into and consummate any agreement to exchange securities for, seek to acquire, or acquire in the open market or by means of a privately negotiated agreement or contract, any voting security or any security convertible into a voting security of a savings bank if, after the consummation thereof, such person would directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such savings bank, unless such person has filed with the commissioner all of the following information on an application form approved by the commissioner and which application form is deemed by the commissioner to be complete and has received a written order from the commissioner approving such acquisition or change of control:

(A) the background and identity of the applicant, if said applicant and any affiliate is an individual, or all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual. Said filing shall contain the following information:

(i) name and address;

(ii) present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(iii) material occupations, positions, offices, or employments previously held by the individual, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office, or employment was carried on, indicating if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency;

(iv) whether such individual is presently charged with or has ever been convicted of a violation of law in a criminal proceeding (excluding minor traffic violations) and, if so, giving the date, nature of conviction, name and location of the court, and penalty imposed or other disposition of the case;

(v) whether such individual has been or is a party to any federal, state, or municipal court lawsuit in which such individual is or was alleged to have violated any federal or state statutes or regulation, and, if so, giving the date, style of the suit, case number, court location, and disposition of the suit;

(vi) whether any such individual has been or is a party to any federal, state, or municipal governmental agency administrative actions in which such individual was or is alleged to be in violation of any governmental agency statute or regulation, and, if so, giving the date, nature of the action, name and location of the governmental agency, and disposition of the case; and any other relevant information requested by the commissioner.

(B) if applicant is not an individual, the nature of its business operations for the past 5 years or for such lesser period as such applicant and any predecessors thereof shall have been in existence;

(C) description of the interrelationships between the applicant and all affiliates of the applicant;

(D) nature, identity, source, and amount of funds or other consideration used or to be used in effecting the acquisition of control, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained, there shall be a description of the transaction, the names of the parties, and all arrangements, or other understanding with such parties, including all arrangements, agreements, or understandings in regard to repayment of the funds;

(E) any plans or proposals which the applicant may have to declare

dividends to liquidate such savings banks, to sell its assets, or to merge it with any person or persons or to make any other material change in its business operations or corporate structure or management, including modifications in or plans to enter into any management contracts, and any financial or employment guarantees given to present and contemplated management;

(F) the terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(G) the number of shares of the savings bank's voting securities (including securities convertible or evidencing rights to acquire voting securities) which the applicant, its affiliates, affiliated persons, and any other related person plans to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(H) a description of any contracts, arrangements, or understandings with respect to any voting security of the savings bank in which the applicant, its affiliates, or any related person is involved;

(I) copies of any contracts, agreements, or other documents which the commissioner determines are relevant to the review of the application; and

(J) any other relevant information requested by the commissioner.

(2) If the person required to file the information referred to in this section is a partnership, limited partnership, syndicate, trust, or other group, the commissioner may require that the information shall be given with respect to:

(A) each partner of such partnership or limited partnership;

(B) each member or such syndicate or group; and

(C) each person who controls such partner or member.

(3) If the person required to file the information referred to in this section is a corporation, the commissioner may require that the information called for shall be given with respect to such corporation and each officer and director of such corporation and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding voting securities of such corporation.

(4) The transaction for acquisition of control of a savings bank may not be

consummated until the commissioner approves the application for acquisition of control. The commissioner shall render his decision within 60 days after the application required by paragraph (1) of this section has been filed with and deemed complete by the commissioner. The commissioner shall deny an application for acquisition of control of a savings bank if he finds any of the following:

(A) the acquisition would substantially lessen competition or would in any manner be in restraint of trade and would result in a monopoly or would be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or the savings bank industry in any part of the state, unless he also finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served and that the proposed acquisition is not a violation of any law of this state or the United States;

(B) the poor financial condition of any acquiring party might jeopardize the financial stability of the savings bank being acquired;

(C) plans or proposals to liquidate or sell the savings bank or its assets are not in the best interest of the savings bank;

(D) the experience, ability, standing, competence, trustworthiness, or integrity of the applicant is such that the acquisition would not be in the best interest of the savings bank;

(E) the savings bank will not be solvent, have adequate capital structure, or be in compliance with the laws of this state after the acquisition;

(F) the applicant has failed to furnish all of the information pertinent to the application reasonably requested by the commissioner.

(G) the acquisition would result in the violation of any law or regulation or it has been evidenced that the applicant, affiliates, or affiliated persons may cause to be abused the fiduciary responsibility held by the savings bank or other demonstration or untrustworthiness of the applicant, affiliates, or affiliated persons which would affect the savings bank has been evidenced; or

(H) the applicant is not acting in good faith.

(5) If any material change occurs in the facts set forth in the application and any documents filed with the Department, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner within 3 business days after the person learns of such change.

#### §75.123. Hearings.

(a) If the commissioner issues a written order denying an application for acquisition of control, the disapproved applicant is entitled to a public hearing on such application.

(b) Proceedings for such hearing shall be instituted by the applicant's filing a petition for hearing within 15 days after the date of the commissioner's order denying the application for acquisition of control or within 30 days after the date upon which the application was filed, whichever date is later.

(c) The commissioner shall provide the applicant notice of not less than 10 days specifying the time, date, and place of the hearing.

(d) Opportunity shall be afforded the applicant to present evidence and argument on those issues involved.

(e) The record of the hearing shall consist of:

(1) all pleading, motions, and intermediate rulings;

(2) the application for acquisition of control and all accompanying documents;

(3) all evidence received and considered;

(4) a statement of those matters officially noticed;

(5) a written transcript of the proceedings, the cost of which shall be assessed to the applicant; and

(6) any other matters or documents required by statute or regulation.

(f) The final decision or order of the commissioner shall be rendered within 30 days after the date the hearing is finally closed. The commissioner may prescribe a longer period of time within which the final decision or order shall be issued, and such extension shall be announced at the conclusion of the hearing.

#### §75.124. Retention of Control.

(a) The following conditions affecting any controlled savings bank, regardless

of when or how such control has been acquired, are grounds for the commissioner to investigate, seek to enjoin, or set aside any change of control of a savings bank, if the commissioner deems the transfer to be against the public interest:

(1) the violation of any law, these regulations, abuse of the fiduciary responsibility held by a savings bank, or other demonstration of untrustworthiness by the savings bank, its holding company, or any controlling person, affiliates, affiliated persons, or any of the officers or directors which would affect the savings bank; or

(2) the violation of any antitrust law of this state by the savings bank, the holding company, or any affiliate.

(b) The commissioner may require the submission of such information as he deems necessary to determine whether any retention of control complies with the law of this state, as a condition of approval of such retention of control.

(c) The commissioner may, when it appears that a change of control may have taken place without prior approval, call a hearing to determine whether there has been in fact a change of control or whether any unauthorized person, or persons, having no apparent ownership interest in the savings bank, acting alone or in concert with others, effectively have indirect controlling or dominating influence over the management or policies of a savings bank. If the commissioner finds that such unauthorized control exists he may, after notice and hearing, issue an order requiring immediate divestiture by certain persons or unapproved or indirect control, or the commissioner may issue any other supervisory order which he deems appropriate.

§75.125. Application for Approval of the Acquisition of Control of a Savings Bank. The Commissioner shall furnish approved forms for acquisition of control of a savings bank. The form is available from the Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

§75.126. Abeyance of Other Applications. When an application for approval of acquisition of control of a savings bank has been received by the commissioner and the savings bank also has other applications on file with the commissioner, such applications may, at the commissioner's discretion, be held in abeyance until the change of control application has been disposed of by the commissioner.

§75.127. Exempt Transactions. The following transactions are exempt from the application requirements of this section:

(1) control of an insured institution acquired solely as a result of foreclosure on the stock of a savings bank which secures a loan contracted for in good faith, where such loan was made in the ordinary course of business of the lender, provided that the acquisition of control pursuant to such foreclosure is reported to the commissioner within 30 days and provided further that the acquiror shall not retain such control for more than one year from the date on which such control was acquired. The commissioner may, upon application by the acquiror, extend such one-year period from year to year for an additional period of time, not to exceed 3 years, if the commissioner finds such extension is warranted and would not be detrimental to the public interest. Nothing in this subsection shall prevent such acquiror from filing an application pursuant to this chapter for permanent approval of the acquisition of control;

(2) control of an insured institution acquired through a percentage increase in stock ownership following a pro-rata stock dividend or stock split, if the proportional interest of the recipients remains substantially the same;

(3) acquisition of additional stock of a savings bank by any person who has held power to vote 25% or more of any class of voting stock in such savings bank continuously for the 3-year period proceeding such acquisition, or has maintained control of the savings bank continuously since acquiring control in compliance with the provisions of law or regulation then in effect provided that such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its application.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325876

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

◆ ◆ ◆  
**Chapter 77. Loans,  
Investments, Savings and  
Deposits**

**Terminology**

• 7 TAC §77.1, §77.2

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

The Texas Savings and Loan Department proposes the repeal of §77.1 and §77.2, concerning definitions and terminology used in the Texas Savings and Loan Act. The definition and terms addressed in these sections no longer need to be set forth separately. Therefore, these sections are not substantively necessary.

James L. Pledger, commissioner, 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. Pledger also has determined that for each year of the first five years the repeals are in effect there will no public benefit anticipated as a result of enforcing the repeals. 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.

Mr. Pledger has determined that the proposed rules will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

The repeals are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

*§77.1. General.*

*§77.2. Definitions.*

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325880

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

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The Texas Savings and Loan Department proposes new §§77.1-77.11, 77.31- 77.35, 77.51, 77.71-77.74, and 77.91-77.95; and Savings and Deposits, 77.101- 77.113, concerning Authorized Loans and Investments.

The new rules are part of a comprehensive series of new regulations, designated as Chapter 75, 77, and 79, which implement the

Texas Savings Bank Act (the Act), adopted in Senate Bill 396, Acts of the 73rd Legislature, Regular Session. The Act authorizes the establishment of a new type of state chartered financial institution known as state savings banks, and provides a framework for their regulation and supervision by the Department. State savings banks are regulated by the Department and by the Federal Deposit Insurance Corporation (FDIC). They are primarily housing lenders with powers similar to savings and loan associations; however, the federal regulatory structure applicable to these institutions, unlike savings and loan associations, is more consistent with that applicable to other types of federally insured depository institutions.

James L. Pledger, commissioner, has determined that for the first five-year period the rule will be in effect there will be fiscal implications to State government as a result of enforcing or administering the rules. All funds used to administer and enforce the Act will be paid by the state savings bank industry through fees and assessments to the Department.

The estimated additional cost to state government for the first five-year period the rules will be in effect will be \$1,084,000 in 1994, \$1,402,000 in 1995, \$1,746,000 in 1996, \$2,129,000 in 1997, and \$2,322,000 in 1998. The estimated reduction in cost will be \$0.00 in each year of the same five-year period. The estimated increase in revenue during the first five year period the rules are in effect will be \$1,084,000 in 1994, \$1,402,000 in 1995, \$1,746,000 in 1996, \$2,129,000 in 1997, and \$2,322,000 in 1998.

There will be no effect on local government for the first five-year period the sections will be in effect.

There will be fiscal implications for small businesses; however, these fiscal implications will only be applicable to small state savings banks. The costs for small savings banks will arise through assessments as well as examination and other fees. Assessments are based upon an institution's asset size and are therefore lower for smaller institutions. Examination fees are based upon a per examiner per day cost for the examiners assigned to an institution's examination and are the same for large and small institutions; however, small institutions are assigned fewer examiners than large institutions which result in lower fees for small institutions. Therefore, a special impact cannot be calculated.

Mr. Pledger also has determined that for each year of the first five years the rule is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be a safer and more fiscally sound State thrift system. Savings Banks will be housing-oriented financial institutions which will provide housing credit to the citizens of Texas. The Act provides a strong system for supervising and regulating state savings banks with broad examination and enforcement powers provided to the Department. The rules also establish requirements that state savings banks maintain minimum levels of investment in loans from the area in which the institution's deposits are derived, consistent with the statutory mandates established in the Act.

The anticipated economic cost to individuals who are required to comply with these rules as proposed will be limited to those individuals seeking a state savings bank charter or seeking to control a state savings bank. As such, these costs will be in the form of application and examination costs associated with obtaining such a charter or an application for a change of control. Otherwise, the rules are applicable to state savings banks and not to individuals.

Mr. Pledger has determined that the proposed rules will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

### Authorized Loans and Investments

- 7 TAC §§77.1-77.11, 77.31-77.35, 77.51, 77.71-77.74, 77.91- 77.95

The new sections are proposed under Texas Civil Statutes, Article 342- 114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.04(9) of Senate Bill 396, passed by the 73rd Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to the powers of savings banks to make loans and investments, containing provisions reasonably necessary to ensure that loans made by savings banks are consistent with sound lending practices and that savings bank investment authority will promote the purposes of the Savings Bank Act.

#### §77.1. Loans Authorized.

(a) A savings bank may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) the following types of loans or participations, subject to the limitations of this Subchapter:

- (1) residential real estate loans, including loans on the security of leasehold interests in residential real estate, in accordance with §77.3 of this title (relating to Residential Real Estate Loans);
- (2) home improvement loans, in accordance with §77.4 of this title (relating to Home Improvement Loans);
- (3) manufactured home loans, in accordance with §77.5 of this title (relating to Manufactured Home Loans);
- (4) interim construction loans, in accordance with §77.6 of this title (relating to Interim Construction Loans);
- (5) other real estate loans, including loans on the security of leasehold interest in real estate, in accordance with

§77.7 of this title (relating to Other Real Estate Loans);

(6) personal property loans, in accordance with §77.8 of this title (relating to Personal Property Loans);

(7) commercial real estate loans, including loans on the security of leasehold interest in real estate, in accordance with §77.9 of this title (relating to Commercial Real Estate Loans);

(8) non-real estate commercial loans, in accordance with §77.10 of this title (relating to Non-Real Estate Commercial Loans);

(9) loans fully secured by savings accounts owned or otherwise pledged for or by the borrower;

(10) unsecured loans, in accordance with §77.11 of this title (relating to Unsecured Loans); and

(11) loans which are insured or guaranteed by the United States or any instrumentality thereof;

(b) A savings bank may purchase or commit to purchase any loan it could make if it were incorporated and operating as a federal savings bank domiciled in this state, so long as for each such transaction the savings bank complies with all applicable regulations governing such activities by federal savings banks. However, all such loans must be documented in accordance with the applicable requirements of this chapter.

**§77.2. Limitations on Aggregate Loans to One Borrower.** A savings bank may not make loans to any one borrower to a greater extent than a savings association is permitted under the Home Owners' Loan Act, §5(u)(12) United States Code 1464(u).

#### §77.3. Residential Real Estate Loans.

(a) A savings bank may make loans or purchase participations in loans secured by residential real estate, on terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations set forth in this section.

(b) A savings bank may make loans or purchase participations in loans secured by a second lien on residential real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the savings bank holds the prior lien, the second lien shall not be inferior to any open-ended future advances under the first lien agreement to which the security property is subject, other than disbursements authorized under the Texas Savings Bank Act, §7.13.

(c) Except as provided in subsection (d) or (e) of this section, all residential real estate loans shall be repayable in monthly installments in an amount sufficient to fully amortize payment of principal and interest within a period not to exceed 40 years from the date the loan is made.

(d) Residential real estate loans may provide for variable interest rates, so long as the following provisions are met:

(1) the term of the loan does not exceed 40 years; and

(2) the factor or index governing the extent of the variation is not under the control of the savings bank and can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is available to the public.

(e) The loan may provide for the deferral and capitalization of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made.

(f) Residential real estate loans which provide for variable interest rates or the deferral and capitalization of interest shall not exceed 125% of the original appraised value of the security, except where the commissioner has given specific prior written approval of a particular loan plan.

(g) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(a) of this Chapter (relating to Loan Documentation).

(h) A loan secured by a first lien on a leasehold interest in real property and improvements situated thereon shall be considered a residential real estate loan, as applicable under this chapter, provided:

(1) if the term of the loan is five years or less, the unexpired term of the leasehold estate must extend or be automatically renewable for a period equal to twice the term of the loan; and

(2) if the term of the loan is more than five years, the unexpired term of the leasehold estate must extend or be automatically renewable for a period of at least 5 years beyond the duration of the loan.

(i) Notwithstanding any provision of this chapter to the contrary, a savings bank may make loans to facilitate the sale by it of real property acquired through foreclosure in the amount of 100% of the purchase price, plus the cost of any improvements included in the subject loan, which loans shall be secured by the real property sold, shall be in accordance with all otherwise applicable lending rules and regulations, and shall be documented in accordance with the applicable requirements of this chapter.

#### §77.4. Home Improvement Loans.

(a) A savings bank may make or purchase participations in home improvement loans secured by a lien on a home, on the terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations of this section.

(b) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest, or may mature and be repayable consistent with in §77.3 of this title (relating to Residential Real Estate Loans).

(c) Prior to funding a loan under this section, a savings bank shall comply with the requirements set forth in §77.31(a)(1), (3), (4), (6), (7), and (10) of this title (relating to Loan Documentation), and shall additionally have the following documents and records in its permanent loan file for such loan:

(1) a proposal signed by the borrower and, if applicable, the contractor reflecting the home improvements to be accomplished;

(2) the original of the signed instrument or instruments creating or constituting the lien securing the loan;

(3) evidence that the savings bank will have a valid lien on the security property according to the terms of the loan documents; and

(4) for all loans of \$50,000 or more, a written appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, who are on a list of appraisers approved by the board of directors and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Corporation. The appraisal report shall be signed by the appraiser or committee of appraisers and on all loans under \$50,000, a written opinion of value, with picture of property, by an appraiser appointed by the board of directors shall be required.

(d) Other property may be provided as additional security for the loan, without meeting the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

(e) Upon completion of the improvements financed by the loan, a certificate of completion executed by the owner or contractor shall be made part of the permanent loan file.

(f) A loan made under this section may include add-on interest as authorized

by the Texas Credit Code, Texas Civil Statutes, Article 5069, §1.01, et seq.

(g) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the savings bank relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the savings bank has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the security property. Any amount of the loan which represents interest shall not be disbursed until earned.

#### §77.5. Manufactured Home Loans.

(a) A savings bank may make or purchase participations in loans secured by perfected first lien security interests in manufactured homes, on the terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations of this section.

(b) Any such loan must mature and become payable within 240 months from the date the loan is made, and shall be repayable in monthly installments of principal and interest.

(c) No loan made under this section shall include amounts to pay interest on the loan.

(d) Prior to funding a loan under this section, a savings bank shall comply with the requirements set forth in §77.31(a)(1), (3), (4), (5), (6), and (7) of this title (relating to Loan Documentation), and shall additionally have the following documents and records in its permanent loan file for such loan:

(1) a purchase money contract signed by the buyer and seller;

(2) the application for or original document of title issued pursuant to the Texas Manufactured Housing Standards Act, or any amendments thereto, showing the savings bank as first lienholder;

(3) evidence that the manufactured home is insured against loss by fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state where the security is located and naming the savings bank as a co-insured, as its interest may appear; and

(4) if security for the loan is real estate, a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, who are on a list of appraisers approved by the board of directors, in writing and in a form

approved by the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. Other property may be provided as additional security for the loan, without meeting the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

#### §77.6. Interim Construction Loans.

(a) A savings bank may make or purchase participations in interim construction loans to finance the construction or improvement of residential or commercial structures when the loans are secured by first and prior liens on the real estate and all structures and improvements to be constructed thereon under the loan agreement.

(b) All such loans shall be repayable in full within 36 months from the date the loan is made, and interest shall be payable at least semi-annually. Such loans may provide for variable interest rates, so long as the factor or index can be readily ascertained from sources available to the public or any other index approved in writing by the commissioner which is available to the public.

(c) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(a) of this title (relating to Loan Documentation).

(d) A loan made under this section may include amounts to pay interest on the loan and other fees, provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons relied upon by the savings bank for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the savings bank has full recourse against the borrower and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the security property. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(e) Each such loan may be renewed beyond 36 months from the date the loan is made only with the express written permission of the commissioner.

#### §77.7. Other Real Estate Loans.

(a) A savings bank may make loans or purchase participations in loans secured by a first and prior lien on unimproved real estate, on the terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations of this section.

(b) A savings bank may make loans or purchase participations in loans secured by a second lien on unimproved real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations of this section. Unless the savings bank holds the prior lien, the second lien shall not be inferior to any open-ended future advances under the first lien agreement to which the security property is subject, other than disbursements under the Texas Savings Bank Act, §7.13.

(c) A loan made under this section may include amounts to pay interest on the loan and other fees, provided a detailed, narrative underwriting report is prepared and included in the loan file explaining the reasons relied upon by the savings bank for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the savings bank has full recourse against the borrower and the total amount of the loan, including any amounts to pay interest and fees does not exceed 90% of the appraised value of the security property. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(d) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(e) of this title (relating to Loan Documentation).

#### §77.8. Personal Property Loans.

(a) A savings bank may make loans or purchase participations in loans secured by perfected first lien security interests in personal property as provided in the Texas Business and Commerce Code, on the terms and in amounts consistent with the savings bank's lending policies, subject to the limitations of this section.

(b) Loans made under this section may include add-on interest as authorized by the Texas Credit Code, Texas Civil Statutes, Article 5069, §1.01, et seq.

(c) Except for add-on interest, a loan made under this section may include amounts to pay interest on the loan, and other fees, provided a detailed, narrative underwriting report is prepared and filed in the loan file explaining the reasons and justifications the savings bank relied upon to include such amounts in the loan. However, the loan shall not include amounts to pay interest on the loan, unless the savings bank has full recourse against the borrower for repayment of the loan and the amount of the loan does not exceed 80% of the appraised value of the security property. Any amount of the loan which represents interest shall not be disbursed until earned.

(d) The savings bank shall monitor the security property to insure that the unpaid balance of the loan does not exceed the value of the property during the term of the loan.

(e) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(a)(1)-(8), (12), and (13) of this title (relating to Loan Documentation). If other property (for example, residential or commercial real estate) is provided as additional security for the loan, the loan is not required to meet the requirements of this chapter for loans secured by such property, so long as all requirements of this section are met.

#### §77.9. Commercial Real Estate Loans.

(a) A savings bank may make loans or purchase participations in loans secured by a first and prior lien on commercial real estate, on the terms and in amounts consistent with the savings bank's real estate lending policies, subject to the limitations of this section.

(b) A savings bank may make loans or purchase participations in loans secured by a second lien on commercial real estate, in the same amount as if the loan were secured by a first lien, less the unpaid balance of the first lien indebtedness and any authorized future advances thereon, on the terms set out in this section. Unless the savings bank holds the prior lien, the second lien shall not be inferior to any open ended future advances under the first lien agreement to which the security property is subject, other than disbursements authorized under the Texas Savings Bank Act, §7.13.

(c) A loan made under this section may include amounts to pay interest on the loan, and other fees, provided a detailed, narrative underwriting report is prepared and included in the loan file explaining the reasons relied upon by the savings bank for including such amounts in the loan. In no event shall a loan include amounts to pay interest or fees, unless the savings bank has full recourse against the borrower and the total amount of the loan, including any amounts to pay interest and fees, does not exceed 90% of the appraised value of the security property. Any amount of the loan that represents interest shall not be disbursed until such interest is due.

(d) A loan secured by a first lien on a leasehold interest in real property and improvements situated thereon shall be considered a commercial real estate loan, as applicable under this chapter, provided:

(1) if the term of the loan is five years or less, the unexpired term of the leasehold estate must extend or be automatically renewable for a period equal to twice the term of the loan; and

(2) if the term of the loan is more than five years, the unexpired term of the leasehold estate must extend or be automatically renewable for a period of at least five years beyond the duration of the loan.

(e) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(a) of this title (relating to Loan Documentation).

§77.10. Non-Real Estate Commercial Loans. A savings bank may lend and invest not more than 15% of its total assets in non-real estate loans for business, corporate, or agricultural purposes.

#### §77.11. Unsecured Loans.

(a) A savings bank may make unsecured loans or purchase participations in unsecured loans, on the terms and in amounts consistent with the savings bank's lending policies, subject to the limitations of this section.

(b) Real estate, personal property, or interests in oil and gas leases may be provided as security for such loans without meeting the requirements of this chapter for real estate or personal property loans, so long as all requirements of this section are met.

(c) Prior to funding a loan under this section, a savings bank shall comply with the requirements of §77.31(c) of this title (relating to Loan Documentation).

#### §77.31. Loan Documentation.

(a) Prior to funding any type of secured loan (other than a loan fully secured by an account on deposit at the savings bank) made or purchased under this chapter, a savings bank shall insure that the following documents and records are in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the savings bank.

(1) an application for the loan, signed by the borrower or his agent (and if the borrower is a corporation, a board of directors resolution authorizing the loan), which discloses the purpose for which the loan is sought, the identity of the security property, and the source of funds which will be used to repay the loan;

(2) a statement signed by the borrower or his agent, or a copy of the executed contract, disclosing the actual price at which the security is being purchased by the borrower, if the loan is made for the purpose of financing the purchase of the security for the loan;

(3) current financial statements signed by the borrower and all guarantors and current documented credit reports disclosing the financial ability of the borrower and guarantors a current financial statement is as of a date within 180 days before the application is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4) a loan approval sheet (which may be part of the loan application form) indicating the amount and terms of the loan, the date of loan approval, by whom approved, the signatures of the persons approving the loan, any conditions of approval, and verifying that the persons approving the loan have confirmed applicable loan-to-one-borrower limitations are met;

(5) a loan disbursement statement or other documentation, indicating the date, amount, and ultimate recipient of every disbursement of the proceeds of such loan (this requirement is not met by showing one or more disbursements to a title company or other escrow agent, but for a construction loan, this requirement may be met by documenting bona fide construction draw disbursements to the general contractor of the project, upon his completion of an affidavit stating that all bills for labor and materials have been paid as of the date of the disbursement);

(6) a loan settlement statement, indicating in detail the expenses, fees and charges the borrower or borrowers have paid in connection with such loan;

(7) the promissory note or notes containing the borrower's obligation to repay, duly executed by the borrower and all guaranty agreements duly executed by the guarantors (a copy of the note or notes may be kept in the loan file, if the original notes are stored for safekeeping in another location at the savings bank);

(8) the original mortgage, deed of trust or other instrument creating or constituting the lien securing the loan;

(9) for real estate loans, an attorney's opinion letter based on an abstract of title, or a policy of title insurance, or binder of same, issued by a title company authorized to insure titles in the state in which the security for the loan is located, showing that the lien securing such loan meets the applicable requirements of this chapter for liens securing the loan in question;

(10) evidence that the insurable improvements of the real estate are insured against loss by a fire and extended coverage policy or its equivalent issued by an insurance company authorized to do business in the state in which the real estate security is

located and naming the savings bank as a co-insured, as its interest may appear;

(11) for real estate loans, a professional appraisal report by an appraiser or committee of appraisers, who may be employees of the savings bank, who are on a list of appraisers approved by the board of directors is required. Reappraisals may be required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the savings bank, when the commissioner has reason to believe the value of the security is overstated for any reason. The appraisal report shall be in writing and in a form approved by the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and shall be signed by the appraiser or committee of appraisers. In case of renewal of a loan where additional funds are advanced by the savings bank, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this subsection;

(12) for personal property loans, a detailed explanation of how the savings bank arrived at the appraised or market value of the security property;

(13) any loan agreement or other ancillary documents relating to the loan; and

(14) any documents required by the Texas Credit Code, Texas Civil Statutes, Article 5069, §1.01, et seq.

(b) Notwithstanding the foregoing requirements, loans in an amount less than \$50,000 shall meet only the documentation requirements of subsection (a)(1)-(8) of this section.

(c) Prior to funding any unsecured loan under this chapter, a savings bank shall insure that the documents and records required in subsection (a)(1) and (3)-(7) of this section are in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding.

(d) Loan documentation which meets the documentation requirements of the applicable agency may be substituted for the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof, or which is guaranteed in any amount by the Veteran's Administration, Federal Housing Administration, or Farmer's Home Administration.

(e) A savings bank may designate as escrow agent an attorney or a title company, either of which must be duly licensed

in the state where the transaction is closed. However, where an escrow agent is used, all original documents shall be forwarded to the savings bank within five business days after closing, or immediately after recording, for those documents which require filing of record.

(f) The permanent loan file required by this section shall be located at an office of the savings bank. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings bank's discretion. Files for loans which are fully secured by accounts at the savings bank may be maintained at the office where the loan was originated.

(g) The permanent loan file shall contain evidence that the savings bank obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings bank's interest therein. This requirement shall not apply to loan participations purchased by the savings bank.

(h) Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw shall be part of the permanent file.

(i) The records of the savings bank shall reflect that the board of directors has by appropriate resolution established procedures for the approval of all loans, loan commitments, or letters of credit made by the savings bank and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings bank. Loans originating in branch offices, loan offices, or agencies shall be approved in the same manner as loans originating in the principal office.

(j) When a savings bank purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The savings bank shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this section.

(k) A savings bank shall maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.



**§77.32. Restriction on Loan Procurement Fees.** No affiliated person of a savings bank may receive, either directly or indirectly, from such savings bank, any subsidiary thereof, or any other source, any fee or any other compensation of any kind in connection with the procurement of any loan made by such savings bank or subsidiary thereof without the prior approval of the commissioner. Nothing in this section shall prevent a savings bank from compensating an employee who is not an affiliated person and whose primary job function is the procurement of loans, in the form of commissions or bonuses based on a percentage of the amount of any loan procured, provided that such percentage shall not exceed one-half of 1.0% for any one loan without the prior approval of the commissioner, and provided that such employee does not participate in the process for approving or disapproving such loan.

**§77.33. Loans to and Transactions With Officers, Directors, Affiliated Persons, and Employees.**

(a) neither a savings bank nor any subsidiary of a savings bank may make or purchase any loan to any affiliated person or to any employee of the savings bank or any subsidiary of the savings bank, except as follows:

(1) loans fully secured by the principal residence of the affiliated person or employee;

(2) loans fully secured by savings accounts maintained by the affiliated person or the employee at the savings bank;

(3) home improvement loans for the borrower's principal residence;

(4) loans in connection with overdraft protection and extensions of consumer credit in connection with credit cards; and

(5) personal property loans to finance the purchase of consumer goods.

(b) All loans made or purchased pursuant to subsection (a) of this section must comply with the following terms.

(1) Prior to funding, the loan must be approved by a resolution duly adopted, at a duly constituted meeting, and after full disclosure, by a majority of the entire board of directors of the savings bank, with no director having an interest in the transaction voting. Full disclosure shall include all terms and conditions of the loan and all facts and circumstances reasonably pertinent thereto.

(2) With respect to any loan authorized by this section made to a salaried officer or employee of the savings bank or a subsidiary of the savings bank, the approval

requirement of paragraph (1) of this subsection shall be satisfied if the loan conforms with a blanket preapproval resolution of the board of directors specifying the terms on which loans may be made to all officers or employees, or a class of such officers or employees, and the loan documents set forth the savings bank's current cost of funds. An institution may not use a blanket preapproval resolution to make loans authorized by this section to a single officer or employee in excess of \$50,000 in the aggregate.

(c) Prior to funding a loan under this section, a savings bank shall comply with the loan documentation requirements of this chapter as applicable to the type of loan in question.

(d) Neither a savings bank nor any subsidiary of a savings bank shall engage in any transaction with any affiliated person involving the purchase, sale, or lease of property or assets, without the prior written approval of the commissioner.

**§77.34. Restrictions on Loan Transactions With Third Persons.**

(a) No savings bank or subsidiary of a savings bank may, either directly or indirectly:

(1) make any loan to, or purchase (other than through a secondary market such as the Federal Home Loan Mortgage Corporation) any loan made to any third party on the security of property purchased from any affiliated person of such savings bank, unless the property was a single family dwelling owned and occupied by the affiliated person as his principal residence;

(2) make any loan to, or purchase any loan made to, any third party secured by real property with respect to which any affiliated person of the savings bank holds a security interest;

(3) accept the stock, bonds, notes or other security of any affiliated person of the savings bank as security for a loan to any third party made or purchased by such savings bank or subsidiary thereof;

(4) maintain a compensating balance with respect to a loan made by any third party to any affiliated person of such savings bank; or

(5) enter any guarantee arrangement or make any take out commitment with respect to a loan made by any third party to any affiliated person of the savings bank.

(b) The restrictions contained in this section may be waived by the commissioner if he determines that the terms of the transaction in question are fair to and in the best interest of the savings bank or subsidiary.

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

**Affiliated person**—A director, officer, or controlling person of a savings bank; a spouse of a director, officer, or controlling person of such savings bank; a member of the immediate family of a director, officer, or controlling person of such savings bank; any corporation or organization (other than the savings bank or a subsidiary of the savings bank) of which a director, officer, or controlling person of such savings bank is chief executive officer, chief financial officer, or a person performing similar functions, is a general partner, is a limited partner who directly or indirectly, either alone or with his spouse and the members of his immediate family, owns an interest of 10% or more in the partnership (based on the value of his contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members, owns an interest of 25% or more in the partnership; or directly or indirectly either alone or with his spouse and the members of his immediate family, owns or controls 10% or more of any class of equity securities or owns or controls, with other directors, officers, and controlling persons of such savings bank and their spouses and their immediate family members, 25% or more of any class of equity securities; any trust or other estate in which a director, officer, or controlling person of such savings bank or a member of his immediate family has a substantial beneficial interest or as to which such person or his spouse serves as trustee or in a similar fiduciary capacity; a holding company affiliate; and any officer, director, or controlling person of a holding company affiliate.

**Commercial real estate**—Land on which structures or improvements which do not qualify the property as residential real estate are located.

**Controlling person**—Any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing 25% or more of the voting shares or rights of a savings bank; or controls in any manner the election or appointment of a majority of the directors of a savings bank. A director of an insured institution will not be deemed to be a controlling person of such institution based upon his voting, or acting in concert with other directors in voting, proxies obtained in connection with an annual solicitation of proxies or obtained from savings account holders and borrowers if such proxies are voted as directed by a majority vote of the entire board of directors of a savings bank, or of a committee of such directors if such committee's composi-

tion and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

**Holding company, affiliate**—A corporation of which a savings bank is a subsidiary and any other subsidiary of such corporation other than a subsidiary of the savings bank.

**Home**—A structure designed and used as a residence by one family, or a structure designed and used for occupancy for one to four family units. The term also includes common areas around town houses or condominium units which are incidental to ownership of the residence.

**Home improvement loan**—Any loan made for the improvement, maintenance, repair, modernization, or equipment of a home.

**Immediate family**—Whether by full or half-blood or by adoption, such person's spouse, father, mother, children, brothers, sisters, and grandchildren; the father, mother, brothers, and sisters of such person's spouse; and the spouse of a child, brother, or sister of such person.

**Interim construction loans**—Loans made to finance the improvement of or the building of residential or commercial structures on developed building sites, and may include the acquisition of such developed building sites. This term does not include home improvement loans allowed under §77.4 of this title (relating to Home Improvement Loans).

**Loans**—For purposes of limitations on loans to one borrower, the total amounts of funds advanced under a loan agreement or commitment plus any interest due and unpaid, less repayments. The term also includes credit extended in the form of finance leases; potential liabilities under standby letters of credit, lines of credit, and guarantee or suretyship obligations, except to the extent the institution has recourse to cash or a segregated deposit account of its customer to indemnify it against such liabilities; undisbursed loan proceeds, unless the loan is subject to an overline purchase commitment of another financial institution; investments in commercial paper and corporate debt obligations; funds which the savings bank is unconditionally committed to advance in the future under any type of commitment; and the amount of funds advanced on a wrap-around loan, plus the unpaid balances of any prior liens the savings bank is allowed to pay under the loan agreement. The term does not include a loan or participation interest the savings bank has sold without recourse, a loan secured by a first lien on real estate subject to an annual contributions contract under former §23 of the United States Housing Act of 1937, a loan on the security of the institution's deposit accounts, or a deposit or a loan of unsecured day(s) funds (i.e., federal funds or similar unsecured loans) with a commercial bank or a savings association.

**Manufactured home**—A structure, transportable in one or more sections, which in the traveling mode is eight body-feet or more in width or 40 body-feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

**Officer**—The president, any vice-president (but not an assistant vice-president, second vice-president or other vice-president having authority similar to an assistant or second vice-president) the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any organization, whether incorporated or unincorporated. The term "officer" shall also mean the chairman of the board of directors if the savings bank's articles of incorporation or bylaws authorize the chairman to participate in the operating management of the institution or if the chairman in fact participates in such management.

**One-borrower**—Any person or entity that is, or that upon the making of a loan will become, obligor on a loan or guarantor of a loan; nominees of such obligor; all persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of 10% or more (based on the value of his contribution), or a record or beneficial stockholder owning 10% or more of the capital stock; and if such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of 10% or more, or record or beneficial stockholder owning 10% or more of the capital stock of such obligor. In the case of a loan that has been assumed by a third party with the consent of the lending institution, the former debtor shall not be deemed an obligor.

**Personal property**—Tangible and intangible property which is not real property, including the following items as defined in the Texas Business and Commerce Code: consumer goods, equipment, farm products, inventory, accounts, instruments, chattel paper, documents, general intangibles, cash proceeds, and non-cash proceeds.

**Recourse**—For the purposes of this chapter, recourse shall mean a contract by a borrower or guarantor to repay 100% of all amounts due and owing under the loan.

**Residential real estate**—Land on which a house, a home, or an apartment house is located.

**Subsidiary**—A subsidiary of a savings bank shall have the meaning prescribed in §77.91 of this title (relating to Subsidiary Corporations).

**Unimproved real estate**—Land which has no substantial improvements or utilities. All other real estate shall be considered residential real estate or commercial real estate.

**§77.51. Letters of Credit.** A savings bank may issue letters of credit in accordance with the terms and conditions of the Uniform Commercial Code of the State of Texas and the Uniform Customs and Practice for Documentary Credits, subject to the following requirements.

(1) The savings bank shall maintain a letter of credit register containing name of customer, address, amount of credit extended and identifying number.

(2) Each letter of credit shall conspicuously state that it is a letter of credit or shall be conspicuously entitled as such.

(3) The savings bank's undertaking must contain a specified expiration date or be for a definite term and must be limited in amount.

(4) The savings bank's obligation to pay shall arise only upon presentation of a draft and other documents as specified in the letter of credit and there shall be no obligation on the part of the savings bank to determine questions of fact or law at issue between the account party and the beneficiary.

(5) The savings bank shall obtain an unqualified obligation from its customer to reimburse it for payments made under the letter of credit.

(6) The amount of each letter of credit shall be included in computing loan limitations to one borrower.

(7) Each letter of credit's terms shall be limited and its documentation shall be accomplished as though it were a loan under this chapter.

(8) An appropriate fee may be collected for each letter of credit issued.

**§77.71. Investment in Securities.**

(a) A savings bank shall have power to invest in obligations of, or guaranteed as to principal and interest by, the United States or this state; in stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank or banks; in stock or obligations of the Federal Savings and Loan Insurance Corporation (FSLIC) or the Federal Deposit Insurance Corporation (FDIC);

in stock or obligations of a national mortgage association created by federal law or any successor or successors thereto; in demand, time, or savings deposits with any bank or trust company the deposits of which are insured by the Federal Deposit Insurance Corporation; in stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that such corporation or agency assists in furthering or facilitating the savings bank's purposes or power; in demand, time, or savings deposits of any financial institution the deposits of which are insured by the FDIC; in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this State; and in such other securities or obligations approved by the commissioner.

(b) A savings bank investing in securities under this section shall insure that the securities are delivered to the savings bank, or for the savings bank's account to a custodial agent or trustee designated by the savings bank, within three business days after paying for or becoming obligated to pay for the securities. The savings bank may employ as custodial agent or trustee a federal home loan bank, a federal reserve bank, a bank the accounts of which are insured by the Federal Deposit Insurance Corporation, any savings and loan association legally exercising trust powers and the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or such other trust company approved in advance by the commissioner. When employing any of the foregoing entities as trustee or custodial agent to accept delivery of the securities, the savings bank shall insure that it receives a custodial or trust receipt for the securities within three business days of the delivery of the securities.

(c) No savings bank or subsidiary thereof may invest, either directly or indirectly, in the stocks, bonds, notes or other securities of any affiliated person without the prior written approval of the commissioner.

(d) No savings bank or subsidiary thereof may, either directly or indirectly, purchase securities from any affiliated person of such savings bank.

(e) Investments in Equity Securities.

(1) A savings bank or any service corporation, operating subsidiary, or finance subsidiary of a savings bank may not invest in stock or equity securities unless the securities qualify as investment grade securities. Additionally, no savings bank may invest in stock or equity securities unless the securities are eligible investments for federal savings banks.

(2) The limitations of paragraph (1) of this subsection do not apply to equity securities:

(A) issued by any United States government-sponsored corporation including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Student Loan Marketing Association; or

(B) issued by a service corporation, an operating subsidiary, or a finance subsidiary of the savings bank.

(f) A savings bank shall be a member of the Federal Home Loan Bank System and is specifically authorized to invest in such Federal Home Loan Bank stock.

**§77.72. Liquidity.** A savings bank shall maintain liquidity in an amount not less than 10% of its total assets in cash and readily marketable investments. The term "cash" shall include unpledged demand accounts in other federally insured depository institutions, a Federal Home Loan or Federal Reserve Bank.

**§77.73. Investment in Banking Premises.**

(a) No savings bank shall, without prior written consent of the commissioner, invest an amount in excess of 80% of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) No savings bank shall acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank, or for the use of the bank in future expansion of its banking facilities. If such real estate acquired for the use of the savings bank in future expansion of its banking facilities is not improved and occupied as banking facilities within (3) years from the date of its acquisition, the savings bank shall sell or otherwise dispose of such property; provided that the commissioner may for good cause shown grant an extension of time for a period of one year or more.

**§77.74. Local Service Area Investment Requirement.**

(a) A savings bank shall maintain an amount equal to at least 15% of its local service area deposits invested in the following categories of assets and investments:

(1) first and second lien residential mortgage loans or foreclosed residential mortgage loans originated from within the savings bank's local service area;

(2) home improvement loans;

(3) interim residential construction loans;

(4) mortgage-backed securities secured by loans from within the savings bank's local service area; and

(5) loans for community reinvestment purposes.

(b) The board of directors of each savings bank shall approve at least annually the definition of the institution's local service area which shall incorporate the primary area, or areas from which the institution receives savings deposits. At the time a savings bank is chartered or converts into a savings bank, a savings bank may seek approval from the commissioner of the definition of its local service area and unless otherwise agreed to by the institution and the commissioner, the savings bank may rely on this definition for the duration of its corporate existence as a savings bank.

(c) For purposes of identifying qualifying loans and investments under subsection (a) of this section.

(1) Mortgage-backed securities shall include mortgage-backed bonds, mortgage pass-through securities, collateralized mortgage obligations and such other securities approved by the Commissioner which are collateralized by first or second lien residential mortgages.

(2) It shall be the responsibility of each institution to provide such information and evidence necessary to identify particular mortgage-backed securities as being secured by loans from within the institution's local service area such as the originator, the originator's servicer or such other information as may identify the underlying loans as being from the institution's local service area.

(3) Loans and investments described in subsection (a) of this section may include first and second lien residential mortgage loans and home improvement or residential construction loans originated from within the institution's local service area and sold by the institution or any subsidiary (including finance subsidiaries) of the savings bank within the preceding 12 months.

(d) Upon application by a savings bank, the Commissioner may grant a limited term waiver from the requirements of subsection (a) of this section. Such application must include information and evidence that quality loans in the categories described in subsection (a) of this section are not available from within the institution's local service area.

**§77.91. Investment in and Divestiture of Subsidiary Corporations.**

(a) As used in this chapter, corporation shall mean any subsidiary whether owned directly or indirectly, wholly or partially. Subsidiary shall mean any company which is controlled by the savings bank or by a company which is controlled, directly or indirectly, by the savings bank. For purposes of this section a savings bank shall be deemed to have control of a company if the savings bank directly or indirectly, or acting in concert with one or more other persons or entities, or through one or more subsidiaries, owns, controls, or holds with the power to vote, or holds proxies representing, more than 25% of the voting shares of such company, or controls in any manner the election of a majority of the directors of such company, is a general partner in or has contributed more than 25% of the capital of such company.

(b) A savings bank may, only after prior written approval of the commissioner, invest in a corporation in accordance with the terms and conditions set forth in this chapter. The commissioner may approve an investment in a corporation if he finds that:

(1) the operation and condition of the savings bank affords no basis for supervisory objection;

(2) there are adequate income and reserves to support the proposed investment;

(3) the operations of the corporation will be clearly distinguishable from those of the parent savings bank; and

(4) the corporation is or will be profitably operating within a reasonable period of time or the investment is reasonably projected to result in economic benefit to the savings bank.

(c) If the commissioner finds that a savings bank has abused or is abusing the authority granted in this chapter, he may at his discretion deny such savings bank the right to future exercise thereof until such abuse or abuses have been corrected.

(d) A savings bank may, with prior written approval of the commissioner, divest itself of the stock or assets of a subsidiary corporation if the commissioner finds that the terms and conditions of the divestiture are in the best interests of the savings bank.

**§77.92. Subsidiary Corporation Application.**

(a) In order to obtain such approval, the applying savings bank shall file with the commissioner an application accompanied by the following information:

(1) an audited financial statement in the event of acquisition of an existing corporation;

(2) a certified resolution of the board of directors of the applying savings bank approving the investment in the corporation;

(3) a certified copy of the articles of incorporation, certificate of incorporation, and bylaws of the corporation;

(4) the acquisition terms, cost, or investment requirements of the savings bank;

(5) projected operating statements of the proposed corporation for its first three years of operation;

(6) an attorney's opinion letter as to direct, indirect, and/or contingent savings bank and corporation liability;

(7) an outline of plans for operation of the corporation;

(8) evidence that the corporation will have adequate management and operating personnel with proper supervision by savings bank management;

(9) plans for the safeguarding of corporate assets;

(10) affidavits from all directors of a savings bank and corporation, fully disclosing any interest they may directly or indirectly have in the proposed or existing corporation; and

(11) such other information or data as the commissioner may require.

(b) Records of the corporation will be made available at all times to state and federal supervisory authorities for examination and review.

(c) The corporation will keep complete and adequate books and records in accordance with generally accepted accounting principles.

**§77.93. Authorized Subsidiary Investments.**

(a) Activities of a corporation performed directly or through one or more wholly owned or partially owned corporations or joint ventures, without prior approval of the commissioner, shall consist of one or more of the following:

(1) loan origination, purchasing, selling, and servicing;

(2) acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing;

(3) purchasing, selling, owning, renting, leasing, managing, subdividing, improving, operating for income, or otherwise dealing in and with real property, whether

improved or unimproved (excluding any investment of any nature in an oil and gas drilling venture, whether such investment be in the stock of a corporate entity or in the partnership or joint venture interest of any entity making purchases or investments in oil and gas drilling ventures);

(4) acquisition of improved residential real estate and mobile home lots to be held for sale or rental;

(5) acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(6) maintenance and management of rental real estate;

(7) serving as real estate brokers;

(8) serving as insurance broker or agent;

(9) engaging in or owning an interest in insurance companies engaged in the property, casualty, fire and marine, life, health and accident, title, fidelity, guaranty, and surety insurance business;

(10) serving in the capacity of trustee under deeds of trust or escrow agent;

(11) preparation of state and federal tax returns for the savings bank's accountholders and/or borrowers;

(12) acquisition, maintenance, and management of real estate to be used for savings bank offices and related facilities;

(13) investing in obligations of, or guaranteed as to principal and interest by, the United States or this state, and in bonds, notes, or other evidences of indebtedness which are a general obligation of any city, town, village, county, school district, or other municipal corporation or political subdivision of this state;

(14) investing in venture capital through small business investment corporations; and

(15) other activities which may be approved by the commissioner.

(b) A corporation shall not, without prior approval of the commissioner, invest in the stock of any savings and loan association or savings bank.

(c) A corporation shall not receive payments on new or established savings accounts or pay out withdrawals of monies from savings accounts, nor shall it perform any duties for the savings bank other than those specifically authorized in this section.

(d) The savings bank shall maintain the originals of all documents relating to the activities of its subsidiaries that do not re-

quire prior approval by the commissioner, which documents shall be made available at all times to state and federal supervisory authorities for examination and review.

**§77.94. Subsidiary Operations.**

(a) The savings bank shall obtain prior written approval of the commissioner for the establishment and location of the main office, and any branch office, agency office, or any other office or facility of the corporation.

(b) A verified copy of all contracts, instruments, joint ventures, and partnership agreements and financing arrangements of the subsidiary investments shall be furnished to the savings bank within 30 days from date of execution.

(c) The corporation agrees to furnish, at the expense of the corporation or savings bank, an independent appraiser's report or other expert opinion as determined to be necessary by the commissioner for the purpose of establishing the value of any investments made by the corporation.

(d) Each corporation shall maintain bond coverage with an acceptable bonding company in an amount to adequately cover each director, officer, employee, and agent who has access to cash or securities of the corporation. Such bond amount shall be in an amount equivalent to 1.0% of total assets but in no event shall be less than \$25,000 nor more than \$2 million. In lieu of a separate surety bond for the corporation, the savings bank may obtain an extension rider to the surety bond coverage of the parent savings bank.

(e) All directors of the savings bank and corporation shall furnish affidavits fully disclosing any direct or indirect interest they may have in each investment made by the corporation.

**§77.95. Subsidiary Investment and Debt Limitation.** Investment in subsidiary corporations shall include investment in its capital stock, paid-in capital, subordinated debentures, unsecured loans, advances, contingencies, and other obligations (excluding secured conforming loans), and shall not, in the aggregate, exceed 10% of the savings bank's total assets without prior approval.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325875

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

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For further information, please call: (512) 475-1350

**Savings and Deposits**

**• 7 TAC §§77.101-77.113**

The new sections are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.04(9) of Senate Bill 396, Acts of the 73rd Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to the powers of savings banks to make loans and investments, containing provisions reasonably necessary to ensure that loans made by savings banks are consistent with sound lending practices and that savings bank investment authority will promote the purposes of the Savings Bank Act.

**§77.101. Distribution or Payment of Dividends or Interest.** Dividends or earnings on savings accounts or interest on deposit accounts may be distributed and paid by a savings bank at such times and on such terms as the board of directors shall direct by proper resolution, in accordance with the terms and provisions pursuant to the rules and regulations and the laws of the State of Texas.

**§77.102. Account Balance to which Dividends or Interest Are Applied.** The savings or deposit account balance to which the declared dividend or interest rate shall be applied shall be determined by adding to the balance of the account at the beginning of the earnings period all additions to such account during the period and subtracting any withdrawals during such period. Withdrawals during the period shall be charged against the last previous addition to the account.

**§77.103. Method of Computing Dividends.** A savings bank may, by resolution of its board of directors, provide for the following.

(1) The declared dividend or interest rate shall be applied to the funds comprising the account balance for the period of time such funds are credited to the account. For the purpose of computing time credited, any money tendered to the savings bank for addition to an account shall be considered as credited to such account as of the date of actual receipt thereof by the savings bank except that the board of directors of a savings bank may provide by appropriate resolution that money tendered to the savings bank on or before the 20th day of a month (or if such 20th day is a

nonbusiness day, the next regular business day) shall for the purpose of computing earnings be considered as credited as of the first day of such month. If such a resolution is adopted, it shall also specify the manner in which money tendered to the savings bank after such 20th or other designated day shall be credited for the purpose of computing earnings. The board of directors may also by appropriate resolution provide that total or partial withdrawals from savings or deposit accounts made during the last three business days of any earning period be permitted to receive full earnings on such savings or deposit accounts, the same as if such withdrawals were made immediately after the closing of such period.

(2) The dividends or interest on amounts withdrawn from regular savings or deposit accounts between (or during) successive dates on which said savings bank regularly distributes earnings may be computed and paid or credited for the period of time from date of actual receipt to date of withdrawal, and in such event shall be at a rate not in excess of the rate at which earnings are distributed on other regular savings or deposit accounts for the earning period.

**§77.104. Advertisements or Public Representations of Account Earnings.** No savings bank shall make any public representation or advertisement in respect to earnings on its savings or deposit accounts in which any earnings percentage or rate is stated that exceeds the current proposed earnings percentage rate of the savings bank for the period during which the representation or advertisement is made; except that on certificates of savings or deposits it is permissible to advertise the current earnings rate and the applicable bonus, fixed or variable rate, or the total of the combination thereof, provided, however, that all advertising on certificates of savings or deposits shall state the term of the certificate and the return to the certificate holder based on the current earnings rate or the rate stated in the savings or deposit certificate.

**§77.105. Give-Aways.** No savings bank shall offer or give as an attraction or inducement for opening or adding to a savings account, certificate of savings or deposit, or maintaining a minimum balance therein, any merchandise, premium, or other item of value; item of value does not include providing customer services on premise. Safe deposit facilities, community rooms, club facilities, notary services, and travel checks may be offered at no cost or at a reduced rate. This rule shall not apply to memberships offered by a savings bank in select clubs or groups having specific membership standards for which a reasonable membership fee is charged and through

which members of such clubs or groups may obtain discounts of travel expenses, merchandise purchases, and other benefits without cost to the savings bank.

**§77.106. Provisions for Distribution of Earnings on Other than Regular Accounts.** Subject to the provisions of this section, the board of directors of a savings bank may provide for the distribution or payment of earnings on other than regular accounts if the account is represented by a certificate of savings or certificate of deposit of not more than 10 years in a form approved by the commissioner.

**§77.107. Notice Prior to Withdrawal.** A savings bank may specially contract with the holder of a regular savings or deposit account whereby such holder agrees to give notice for a period of 90 days or more immediately prior to making any withdrawal from such account. Such contract may further provide that such notice will not be required for a withdrawal at the end of an earnings period or within ten days thereafter if said account has been intact as much as 90 days, and the savings bank agrees to pay dividends or earnings on said account at a rate higher than the regular passbook rate. A savings bank may adopt procedures providing for waiver of the notice for withdrawal from such account on an emergency basis.

**§77.108. Deposit Accounts.**

(a) Deposit accounts are hereby authorized for state-chartered savings banks, provided that each savings bank desiring to use the deposit account shall, by appropriate resolution of its directors and appropriate amendment of its bylaws by its members thereof, approve such type of account.

(b) In connection with various types of deposit accounts the form of certificates or passbooks to be used shall be submitted to the commissioner for approval.

(c) In the event that a savings bank adopts and becomes a deposit institution as provided for in this section, then in such event it may continue to maintain its theretofore existing accounts as regular savings accounts and certificate of savings accounts until same are converted to deposit accounts or certificates of deposit by the holders thereof.

**§77.109. Now Accounts.** A savings bank may, when authorized by its board of directors, permit the withdrawal of funds from savings accounts by means of negotiable orders of withdrawal payable to third parties, provided all documentation meets applicable statutory and regulatory requirements.

**§77.110. Checking Accounts.** A savings bank may, when authorized by its board of directors, permit the withdrawal of funds from deposit accounts (whether interest-bearing or not) by means of checks payable to the order of third parties drawn by the account holder and payable by the savings bank upon presentation in accordance with the Uniform Commercial Code of this state.

**§77.111. Approval of the Commissioner.** No savings bank shall permit withdrawals in the manner authorized by §77.109 of this title (relating to Now Accounts), §77.110 of this title (relating to Checking Accounts), this section, §77.112 of this title (relating to Noninterest-Bearing Deposit Accounts), and §77.113 of this title (relating to Overdraft Protection-Credit and Debit Cards) until it shall have filed with the Department the following:

(1) a true copy of the resolution of the board of directors of the savings bank authorizing such mode of withdrawal;

(2) a true copy of the documents pertaining to the settlement of items drawn on the savings bank and any check or draft processing agreement with respect to such items; and

(3) the contract between the account holder and the savings bank (signature card) and all supporting documents in which the terms and conditions applicable to the account such as the interest, if any, payable thereon, charges for services rendered to the account, minimum balance requirements, activity requirements, manner and frequency of statement rendering and the like are set forth and agreed upon.

**§77.112. Noninterest-Bearing Deposit Accounts.** Any savings bank may, when authorized by its board of directors, raise capital in the form of deposit accounts having all of the rights and privileges of its regular deposit accounts except the right to the receipt of interest provided the holder of such an account has expressly waived in writing all rights to receive interest.

**§77.113. Overdraft Protection-Credit and Debit Cards.** A savings bank which permits withdrawals from accounts in the manner authorized by §77.109 of this title (relating to Now Accounts), §77.110 of this title (relating to Checking Accounts), §77.111 of this title (relating to Approval of the Commissioner), or §77.112 of this title (relating to Noninterest-Bearing Deposit Accounts) may offer in connection with such accounts overdraft protection to account holders in the form of revolving loans and may offer revolving triparty arrangements (credit and debit cards) under of the Texas Credit Code, Chapter 15, on terms

and in amounts consistent with the savings bank's lending policies.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325874

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

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**Chapter 79. Miscellaneous  
Books, Records, Accounting  
Practices, Financial State-  
ments, and Reserves**

The Texas Savings and Loan Department proposes new §§79.1-79.6, 79. 21-79.26, 79.41-79.46, 79.61, 79.71-79.76, and 79.91-79.107, concerning books, records, accounting practices, financial statements and reserves.

The new regulations are part of a comprehensive series of new regulations, designated as 7 TAC Chapters 75, 77, and 79, which implement the Texas Savings Bank Act (the Act), adopted in Senate Bill 396 passed by the 73rd Legislature, Regular Session. The Act authorizes the establishment of a new type of state chartered financial institution known as state savings banks and provides a framework for their regulation and supervision by the Department. State savings banks are regulated by the Department and by the Federal Deposit Insurance Corporation (FDIC). They are primarily housing lenders with powers similar to savings and loan associations; however, the federal regulatory structure applicable to these institutions, unlike savings and loan associations, is more consistent with that applicable to other types of federally insured depository institutions.

James L. Pledger, commissioner, has determined that for the first five-year period the rules will be in effect there will be fiscal implications to the state as a result of enforcing and administering the rules. All funds used to administer and enforce the Act will be paid by the state savings bank industry through fees and assessments to the Department. The effect on state government for the first five-year period the rule will be in effect will be an estimated additional cost and increase in revenue of \$1,084,000 in 1994; \$1,402,000 in 1995; \$1,746,000 in 1996; \$2,129,000 in 1997; and \$2,322,000 in 1998. There will be no fiscal implications for local governments as a result of enforcing or administering these rules.

Mr. Pledger also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be a safer and more

fiscally sound State thrift system. Savings Banks will be housing-oriented financial institutions which will provide housing credit to the citizens of Texas. The Act provides a strong system for supervising and regulating state savings banks with broad examination and enforcement powers provided to the Department. These rules also establish requirements that state savings banks maintain minimum levels of investment in loans from the area in which the institution's deposits are derived consistent with the statutory mandates established in the Act. There will be fiscal implications for small businesses; however, these fiscal implications will only be applicable to small state savings banks. The costs for small savings banks will arise through assessments as well as examination and other fees. Assessments are based upon an institution's asset size and are therefore lower for smaller institutions. Examination fees are based upon a per examiner per day cost for the examiners assigned to an institution's examination and are the same for large and small institutions; however, small institutions are assigned fewer examiners than large institutions which result in lower fees for small institutions.

The anticipated economic costs to persons who are required to comply with these rules as proposed will be limited to those individuals seeking a state savings bank charter or seeking to control a state savings bank. As such, these costs will be in the form of application and examination costs associated with obtaining such a charter or an application for a change of control. Otherwise, these rules are applicable to state savings banks and not to individuals.

Mr. Pledger also has determined that the proposed rule will have no local employment impact.

Comments on the proposal may be submitted to James L. Pledger, Commissioner, Texas Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705.

#### • 7 TAC §§79.1-79.6

The new sections are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.04(1) and (3)-(8) of Senate Bill 396, passed by the Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to minimum capital requirements, required books and records to be maintained, applicable accounting principles and practices, the required publication of statements of condition, annual reports and other reports to be filed by savings banks, the manner in which assets, liabilities, and transactions are to be described on the books of a savings bank, and the conditions under which the commissioner may require assets to be charged off or reserves established.

**§79.1. Location of Books and Records.** Unless otherwise authorized by the

commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office.

**§79.2. Accounting Practices.** Every savings bank shall use such forms and observe such accounting principles and practices as the commissioner may require from time to time.

**§79.3. Reproduction and Destruction of Records.** Any savings bank may cause any or all records kept by such institution to be copied or reproduced by any photostatic, photographic, or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such savings bank may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record. A facsimile, exemplification or certified copy shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

**§79.4. Financial Statements; Annual Reports.**

(a) Every savings bank shall prepare and publish annually in the month of January of each year in a newspaper of general circulation in the county in which the home office of such savings bank is located, a statement of its financial condition as of the last business day of December of the preceding year in the form prescribed or approved by the commissioner.

(b) On or before the last day of January in each year every savings bank shall make an annual written report to the commissioner, upon a form to be prescribed and furnished by the commissioner, of its affairs and operations, which shall include a complete statement of its financial condition, including a statement of income and expense since its last previous similar report, for the 12 months ending on the last business day of December of the previous year. Every such report shall be signed by the president, vice president, or secretary. Every savings bank shall also make such other reports as the commissioner may from time to time require, which reports shall be in such form and filed on such dates as he may prescribe and shall, if required by him, be signed in the same manner as the annual report.

**§79.5. Misdescription of Transactions.** No savings bank by any system of account or any device of bookkeeping shall, either directly or indirectly, knowingly make any entry upon its books that is not truly descriptive of the transaction which causes the entry.

**§79.6. Charging Off or Setting Up Reserves Against Bad Debts.** The commissioner, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be set up by transfers from surplus or paid in capital.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325873

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

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For further information, please call: (512) 475-1350

## Capital and Capital Obligations

### • 7 TAC §§79.21-79.26

The new sections are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.04(1) and §8.03 of Senate Bill 396, passed by the 73rd Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to minimum capital requirements.

**§79.21. Capital Requirements.**

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

(1) Capital for a capital stock savings bank—Shall include the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under generally accepted accounting principles) plus any retained earnings and paid in surplus as well as such other items as the commissioner may approve in writing for inclusion as capital.

(2) Capital for a mutual association—Shall include its pledged savings liability and expense fund plus any retained earnings and such other items as the commissioner may approve in writing for inclusion as capital.

(3) Total liabilities—Shall mean total savings liability of a savings bank, plus all amounts the savings bank owes or which are payable by it or which it may be obligated to pay for any reason, including unapplied mortgage credits, dealer participation reserves, dealer hold-back reserves, all consignment items, and all other liabilities.

(b) Minimum Capital Requirement. Each association shall maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

**§79.22. Increase or Decrease of Minimum Capital Requirements.**

(a) The commissioner may increase or decrease the minimum capital requirement set forth in this chapter, upon written application by an association or by supervisory directive if the commissioner shall have affirmatively found from the data available and/or the application and supplementary information submitted therewith that:

(1) the association's failure to meet the minimum net worth requirement is not due to unsafe and unsound practices in the conduct of the affairs of the association, a violation of any provision of the articles of incorporation or bylaws of the association, or a violation of any law, rule or supervisory order applicable to the association or any condition that the commissioner has imposed on the association by written order or agreement. For purposes of this chapter, unsafe and unsound practices shall mean, with respect to the operation of an association, any action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to otherwise reduce the ability of the association to timely satisfy withdrawal requests of savings account holders, including, without being limited to, excessive operating expenses, excessive growth, highly speculative ventures, excessive concentrations of lending in any one area, and non-existent or poorly followed lending and underwriting policies, procedures and guidelines;

(2) the association is well managed. In determining whether the applying association is well managed, the commissioner may consider:

(A) management's record of operating the association;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the association in changing economic conditions; and

(E) such other factors as the commissioner may deem necessary to properly evaluate the quality of the association's management;

(3) the savings bank has submitted a plan acceptable to the commissioner for restoring capital within a reasonable period of time. Such plan shall describe the means and schedule by which capital will be increased. The plan shall also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons as defined in Chapter 77 of this title (relating to Loans, Investments, Savings and Deposits). The plan shall provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in net worth until near the end of the waiver or variance period or that does not appear to the commissioner to be reasonably feasible will not be acceptable. The commissioner may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the commissioner must file quarterly progress reports regarding compliance with its capital plan. The commissioner may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the commissioner for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the commissioner may impose any condition, limitation, or restriction on such increase or decrease as the commissioner may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The commissioner may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the institution fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the commissioner;

(4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the commissioner at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its articles of incorporation or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the commissioner has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

**§79.23. Business Plans.**

(a) All savings banks whose operations are considered by the commissioner unsafe or unsound pursuant to the Texas Savings Bank Act or which have total capital less than the amount required under §79.21 of this title (relating to Capital Requirements) or §79.22 of this title (relating to Increase or Decrease of Minimum Capital Requirements) shall develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan shall not be less than one year, but may be for any greater number of periods that the commissioner may require.

(b) The savings bank's business plan shall be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board of directors, at least annually.

**§79.24. Capital Notes and Debentures.** No savings bank may issue and sell its capital notes or debentures without the prior written approval of the commissioner and subject to any conditions the commissioner may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of



preservation of capital, quality of earnings, and adequacy of reserves.

**§79.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.** A savings bank may, by resolution of its board of directors and with prior approval of the commissioner, issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

(1) the savings bank provides adequate proof to the satisfaction of the commissioner that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and

(2) sufficient evidence is furnished to the commissioner as to the need and utilization of such funds by the savings bank in a profitable manner.

**§79.26. Joint Issuance of Capital Obligations.** On the same terms and conditions as stated in §79.25 of this title (relating to Provisions for Issuance of Secured or Unsecured Capital Obligations), a savings bank may, by resolution of its board of directors and with prior approval of the commissioner, join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if it meets the terms and conditions of §79.25 of this title.

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

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TRD-9325872 James L. Pledger  
Commissioner  
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Department

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For further information, please call: (512) 475-1350

## Holding Companies

### • 7 TAC §§79.41-79.46

The new sections are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to

time, to amend same, and under §4.04(15) and §10.08 of Senate Bill 396, passed by the 73rd Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules providing for registration and reporting of holding companies, establishing limitations on the activities and investments of holding companies, and providing for other matters as may be appropriate under this chapter.

**§79.41. Registration.** A holding company shall register with the commissioner on forms prescribed by the commissioner within 90 days after the date of becoming a holding company. The forms must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the commissioner finds necessary and appropriate. On application, the commissioner may extend the time within which a holding company shall register and file the required information.

**§79.42. Reports.** Each holding company and each subsidiary of a holding company, other than a savings bank, shall file with the commissioner reports required by the commissioner. The reports must be made under oath and must be in the form and for the periods prescribed by the commissioner. Each report must contain information concerning the operations of the holding company and its subsidiaries as the commissioner may require. A holding company shall file with the Commissioner copies of any filings, documents, statements, or reports required to be filed with the appropriate federal regulatory authorities.

**§79.43. Books and Records.** Each holding company shall maintain books and records as may be prescribed by the commissioner.

**§79.44. Examinations.** Each holding company and each subsidiary of a holding company is subject to examinations as the commissioner may prescribe. The holding company shall pay the cost of an examination. The confidentiality provisions of the Texas Savings Bank Act, §4.08, shall apply to this section. The commissioner may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the commissioner, to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

**§79.45. Agent for Service of Process.** The commissioner may require a holding company or a person, other than a corporation,

connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

**§79.46. Release from Registration.** The commissioner at any time, on the commissioner's own motion or on application, may release a registered holding company from a registration made by the company if the commissioner determines that the company no longer controls a savings bank.

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-9325879 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

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## Foreign Savings Banks

### • 7 TAC §79.61

The new section is proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under Chapter 10 of Senate Bill 396, passed by the 73rd Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules relating to foreign financial institutions.

**§79.61. Foreign Savings Banks.** The rules and regulations in §75.10 of this title (relating to Change of Name), §§75.31-75.41 of this undesignated head (relating to Additional Offices), §75.40 of this title (relating to Agencies), and §75.38 of this title (relating to Change of Office Location) shall be applicable to foreign savings banks.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325870 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

## Hearings

### • 7 TAC, §§79.71-79.76

The new sections are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.04(2) of Senate Bill 396, passed by the 73rd Legislature, Regular Session, 1983, which authorizes the commissioner and The Finance Commission of Texas to adopt rules relating to fees and procedures for processing, hearing, and deciding applications filed with the commissioner.

**§79.71. Record of Hearings.** The commissioner shall secure the services of a competent reporter, who is authorized to administer an oath under the laws of this state, who shall keep a formal record of the proceedings of any hearing held under the provisions of the Texas Savings Bank Act. The reporter shall administer the customary oath taken by witnesses in courts of competent jurisdiction to all witnesses offering testimony at any such hearing.

#### **§79.72. Conduct of Hearings.**

(a) All hearings conducted pursuant to the Texas Savings Bank Act (Act), shall be conducted in accordance with this chapter by a hearing officer designated by the commissioner.

(b) For purposes of this chapter, decision-maker shall mean the commissioner. Basic fact shall mean a determination from the evidence and matters officially noticed that relates to the criteria for action by the decision-maker set out in the Act, or this title, as applicable. Ultimate fact shall mean the criteria for action by the decision-maker set out in the Act, or Title 7, Part IV, as applicable.

(c) Subject to any limitations imposed by law or by section rule, the hearing officer shall have broad discretion in regulating the course and conduct of any hearing over which he is presiding. The hearing officer shall have, but not be limited to, the authority:

- (1) to administer oaths and affirmations;
- (2) to call and examine witnesses;
- (3) to make necessary rulings during a hearing;
- (4) to make discovery orders as provided in the Administrative Procedure and Texas Register Act (APTRA), §14a;
- (5) to submit a report on the matter heard, to the decision-maker, including findings of basic fact and proposed or

recommended findings of ultimate fact and such recommended orders as may be supported by the record and are within the statutory authority of the decision-maker; and

(6) to take any other action not prohibited by law or section regulation which is necessary for a fair, just, and proper hearing.

(d) If, prior to final action on the matter in issue, the designated hearing officer in any case ceases to serve as such for any reason, the decision-maker may designate another hearing officer to complete the case without the necessity of repeating or duplicating any duty or function performed by the previous hearing officer, other than reading the record.

(e) The sections governing evidence and official notice in contested cases before the hearing officer shall be as provided in the Administrative Procedure Texas Register Act, §14.

(f) When a proceeding will be expedited and the interests of the parties will not be substantially prejudiced, direct testimony may be received in written form. The written testimony of a witness on direct examination, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the necessity of its being read. A witness who is offering written testimony shall be sworn and shall identify the written testimony as a true and accurate representation of what his testimony would be if he were to testify orally, after which the witness shall submit himself to voir dire and cross examination. Written testimony shall be subject to the same evidentiary objections as oral testimony. Written testimony shall be filed with the hearing officer and served on all parties of record. Written testimony prepared and circulated prior to the hearing in accordance with this subsection shall be read into the record, in whole or in part, only when required or permitted by the hearing officer.

(g) The hearing officer shall have the right in any proceeding to limit the number of witnesses whose testimony he finds will be merely cumulative.

(h) Neither the commissioner nor the presiding officer shall be subject to questioning in any hearing held pursuant to the Texas Savings Bank Act, §5. 03.

#### **§79.73. Proposal for Decision.**

(a) If, in a proceeding, the decision-maker has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the Department itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded each party adversely

affected to file exceptions and present briefs. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. The proposal for decision must contain a statement of the reasons for the proposed decision, each finding of basic fact and proposed or recommended findings of ultimate fact necessary to the proposed decision, each prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section. The proposal for decision shall be accompanied by a hearing officer's report. This report shall contain a statement of the nature of the case, a discussion of the issues, the evidence, and the applicable law.

(b) In his discretion, and after notification to all parties, the hearing officer or one who has read the record may permit or require a party to draft and submit proposed findings of fact on the matters in issue under the Act, or Title 7, Part IV, as applicable. The requestor may limit his request for proposed findings to any particular issue or issues of fact. The party's proposed findings of fact shall be supported by concise and explicit statements of basic facts developed from the record with specific references to the record. Only if the requestor required the filing of proposed findings of fact or a proposal for decision shall the decision-maker be required to rule on each of the proposed findings of fact as provided in the Administrative Procedure Texas Register Act, §16.

(c) A proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. Unless the amended proposal for decision is served on all parties, amendments adopted by the decision-maker shall be noted and embodied with specificity in the final order.

(d) Any party of record may file exceptions to a proposal for decision within 15 days after the date of service of that proposal. Replies to exceptions may be filed within 15 days after the date of service of the proposal. Exceptions and replies must be supported by evidence of record with a specific page reference to the record supporting the fact and the evidence asserted. Argument and reference to the record shall be grouped under the exception or reply to which they relate. Extensions of time within which to file exceptions and replies may be granted only under extraordinary circumstances when the interests of justice so require.

(e) Briefs may be filed prior to the issuance of a proposal for decision only when requested or permitted by the hearing officer. The hearing officer may limit the scope of briefs requested or permitted to be

filed under this section to a particular issue or set of issues presented by the case. The time for filing briefs under this section shall be as required by the hearing officer.

(f) Unless requested or permitted by the commissioner, briefs may be filed after issuance of a proposal for decision only if the commissioner did not hear the case or read the record. The time for filing briefs and reply briefs under this section shall be the same as provided for the filing of exceptions and replies under subsection (d) of this section.

#### *§79.74. Action after Proposal for Decision.*

(a) At any time after the expiration of time for filing exceptions and replies as provided by these sections, or notification by all parties that further filings are waived, the entire record or the proposal for decision or both may be considered by the commissioner, without further hearing or meetings. The decision-maker may adopt the proposal, in whole or in part, or it may decline to adopt the proposal, in whole or in part. The decision-maker may remand the proceeding for further consideration by a hearing officer to be accomplished with or without reopening the hearing. If, on remand, additional evidence is received which results in a substantial revision of the hearing officer's report, a new proposal for decision shall be prepared, in whole or in part, unless the decision-maker has attended the hearing or read the record on remand. If a new proposal for decision is prepared, it shall be clearly labeled as such, and all parties of record shall have the right to file exceptions, replies, and briefs, as if the new proposal were the original proposal for decision. The decision-maker is not limited to the specific types of actions outlined in this section and may take any other action it deems to be just and reasonable.

(b) A final decision in a contested case shall be rendered within 60 days of the date on which the hearing is closed, unless, in a contested case heard by other than the decision-maker, the hearing officer prescribes and announces at the conclusion of the hearing a longer period of time within which a final decision will be rendered. The final decision of the decision-maker in any case shall be embodied in a final order which shall be identified as such.

(c) A final order in a contested case shall include, or adopt by reference to a proposal for decision, findings of fact and conclusions of law as required by the Administrative Procedure Texas Register Act. If a party pursuant to §79.73(b) of this title (relating to Proposal for Decisions), is required by the hearing officer to submit proposed findings of fact, the final order shall include, or adopt by reference to a proposal for decision, a ruling on each proposed

finding. A copy of the final order shall be served on all parties of record.

(d) Motions for rehearing and replies to such motions may be filed in a contested case by any party of record pursuant to the Administrative Procedure Texas Register Act, §16. Any filing seeking modification of a final order in any respect shall be considered a motion for rehearing, notwithstanding its actual designation or the specific relief sought. The granting of a motion for rehearing does not require that a hearing officer rehear the case, but means only that the decision-maker will reconsider the final decision.

(e) Administrative finality of the decision-maker's action is governed by the Administrative Procedure Texas Register Act, §16.

#### *§79.75. Confidentiality of Financial Information.*

(a) Financial information required as part of the application for charter for a savings bank shall be maintained in a file apart from the application file and the hearing record and shall be treated as confidential and privileged documents by the hearing officer.

(b) Parties and their representatives involved in a contested application may obtain access to this confidential financial information as follows.

(1) The parties may present a notarized written statement granting permission for access to the information from the applicant about whom the information is sought and by entering into a protective order with the applicant which protects the confidential nature of the documents, and which has been approved by the hearing officer.

(2) If the party and applicant cannot agree on access and a protective order, the party seeking the financial information may request that the hearing officer enter a protective order covering such documents and setting forth the standards for the access of the party to such information. The hearing officer shall enter such a protective order only upon a clear showing by the party seeking such information that the party would be substantially harmed in the presentation of its case on the merits if the information is not disclosed.

(c) If applicant or a party desires to admit such financial information pertaining to an applicant into the hearing record, they shall inform the hearing officer, and the hearing officer shall order that only those persons who sign a protective order which sets forth standards which protect the confidential nature of the documents may remain during the presentation of this evidence. The transcript and hearing exhibits which

refer to confidential information shall be sealed and may be reviewed only by persons subject to the protective order, the hearing officer, the commissioner and his counsel and any appellate court.

(d) A proposal for decision or commissioner's order shall address such information in a generalized and nonspecific form designed to protect the confidential nature of the financial information.

*§79.76. Recovery of Costs of Administrative Hearings.* The commissioner may for good cause, after notice and hearing, impose direct administrative costs incurred by the Department related to hearings on applications filed pursuant to the Texas Savings Bank Act, in addition to other sanctions and cost recoveries provided by law or these rules. Direct administrative costs include, but are not limited to, reasonable attorney's fees and deposition expenses, witnesses' travel expenses, reasonable fees for professional services of expert witnesses, the reasonable cost of a study, analysis, audit or other project the commissioner finds necessary in preparation of the state's cause.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325869

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

### Fees and Charges

#### • 7 TAC §§79.91-79.107

The new sections are proposed under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under §4.07 of Senate Bill 396, passed by the 73rd Legislature, Regular Session, 1993, which authorizes the commissioner and the Finance Commission of Texas to adopt rules which establish fees to be charged for supervision, examination, applications, hearings, and for other services performed by the Department.

*§79.91. Fee for Charter Application.* Applicants for new charters for savings banks shall pay a fee of \$10,000. This fee shall be paid at the time of filing and shall include the cost of filing, and processing of said application. In addition, the applicant shall pay the cost of a formal record and any cost

incurred by the department in connection with the hearing, investigation, and travel expenses.

**§79.92. Fee for Additional Office or Agency.**

(a) Applicants for additional offices and/or agencies under of this title §§75.31-75.41 of this undesignated head (relating to Additional Offices), §75.40 of this title (relating to Agencies), except mobile facilities and administrative offices under §75.35 of this title (relating to Mobile Facilities), shall pay a fee of \$2,500. This fee shall be paid at the time of filing and shall include the cost of filing, and processing of said application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation and travel expenses.

(b) Applicants for an administrative office under §75.32 of this title (relating to Additional Offices) shall pay a fee of \$500. This fee shall be paid at the time of filing and shall include the cost for filing and processing said application.

**§79.93. Fee for Mobile Facility.** Applicants for a mobile facility under §75.35 of this title (relating to Mobile Facilities) shall pay a fee of \$500 plus \$100 for each location. This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation and travel expenses.

**§79.94. Fee for Change of Name or of Location.** Applicants for change of name or change of location of any office, approved or existing, shall pay a fee of \$500. This fee shall be paid at the time of filing and shall include the cost for filing, processing, and hearing of said application. In addition, the applicants shall pay the cost of a formal record and any cost incurred by the department in connection with the hearing, investigation and travel expenses.

**§79.95. Fee for Examination or Audit.** Each association subject to the Savings Bank Act shall pay to the commissioner an examination fee based upon a per day rate of \$325 for each day during which each examiner is engaged in the examination of the affairs of such savings bank under the provisions of the Texas Savings Bank Act §4.06.

**§79.96. Fee for Charter and Bylaw Amendments.** The commissioner shall collect a filing fee of \$100 for each amendment to a charter or to the bylaws of a savings bank.

**§79.97. Fee for Permission to Issue Capital Obligations.** The commissioner shall collect a filing fee of \$1,000 for each application by a savings bank for permission to issue capital notes, debentures, bonds, or other capital obligations to cover processing and investigation of such applications.

**§79.98. Annual Fee To Do Business.** All savings banks chartered under the laws of the state and all foreign savings banks organized under the laws of another state of the United States holding a certificate of authority to do business in this state shall pay to the commissioner such annual fee or assessment and examination fees as are set by the Finance Commission of Texas. Annual fees and assessments shall be established based upon the total assets of the association at the close of the calendar quarter immediately preceding the effective date of the fee or assessment.

**§79.99. Fee for Reorganization Merger, and Consolidation.**

(a) Any association seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, §3.03 and §§75.81-75.88 of this undesignated head (relating to Reorganization, Merger, Consolidation, Purchase and Assumption and Acquisition) shall pay to the commissioner, at time of filing its plan, a fee determined as follows:

(1) for each association involved in the plan, the sum of \$2,000;

(2) for each office or agency involved and which will be part of the resulting or surviving institution, the sum of \$200;

(3) if there is to be a change of name for the resulting or surviving institution, the sum of \$500.

(b) The fee set forth in subsection (a) of this section shall cover the cost of filing and processing with respect to the plan. In addition, such savings bank shall pay the cost of a formal record, if applicable, any cost incurred by the department in connection with the hearing, investigation and travel expenses.

**§79.100. Fee for Remote Service Unit Application.** Applicants for a remote service

unit under §75.37 of this title (relating to Remote Service Units) shall pay a fee of \$500 per application. This fee shall be paid at the time of filing and shall include the cost for filing and processing said application.

**§79.101. Fee for Change of Control.** The commissioner shall collect a filing fee of \$7,500 for each application filed pursuant to §§75.121-75.127 of this title (relating to Change of Control) for change of control of a savings bank.

**§79.102. Fee for Subsidiaries.** The commissioner shall collect a fee of \$1,000 for each application by a savings bank for permission to make an initial investment in a subsidiary corporation pursuant to §§77.91-77.95 of this undesignated head (relating to Loans and Investments) to cover the processing and investigation of such applications, and an additional fee of \$100 for each office other than the home office of a subsidiary that is applied for. The commissioner shall collect a fee of \$100 for each application by a savings bank to change the name of a subsidiary or the location of a subsidiary office.

**§79.103. Fee for Charter Application Under §75.36.** The commissioner shall collect a filing fee of \$500 for the processing of an application for a charter for a savings bank where the sole purpose of such application is the purchase of the assets, assumption of liabilities, and continuation of the business of any institution deemed by the commissioner to be in an unsafe condition, pursuant to §75.36 of this title (relating to Designation as and Exemption for Supervisory Sale).

**§79.104. Fee for Conversion to Another Financial Institution Charter.** The commissioner shall collect a filing fee of \$5,000 for each application filed pursuant to §75.89 of this title (relating to Conversion into Another Financial Institution Charter) for conversion to another financial institution charter.

**§79.105. Fee for Conversion into a Savings Bank.** The commissioner shall collect a filing fee for each application filed pursuant to §75.90 of this title (relating to Conversion into a Savings Bank) for conversion into a savings bank pursuant to the following schedule:

\$ 0 - 40 million	\$15,000
40 - 50 million	16,000
50 - 60 million	17,000
70 - 100 million	18,000
100 - 150 million	20,000
151 - 180 million	21,000
180 - 250 million	22,000
250 million - 1 billion	25,000
1 billion - 2 billion	27,000
2 billion - 3 billion	30,000
3 billion - 4 billion	33,000
Over 4 billion	35,000

**§79.106. Fee for Mutual to Stock Conversion.** The commissioner shall collect a filing fee of \$7,500 for each application filed pursuant to §75.91 of this title (relating to Mutual to Stock Conversion) for conversion into a stock savings bank.

**§79.107. Fee for Holding Company Registration.** The commissioner shall collect a filing fee of \$5,000 for each application filed pursuant to §79.41 of this Chapter (relating to Holding Companies) as registration of a holding company.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325868

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 475-1350

## TITLE 13, CULTURAL RESOURCES

### Part VII. State Preservation Board

#### Chapter 111. Rules and Regulations of the Board

##### • 13 TAC §111.24

The State Preservation Board proposes an amendment to §111.24, concerning project change policy. The amendment allows more flexibility in managing the agency, while strengthening reporting requirements to the Board.

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

Mr. Herndon also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the agency will have met requirements of the Texas Government Code §443.007, clearly defining the area under the responsibility of the board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lori Kneisly, State Preservation Board, P.O. Box 13286, Austin, Texas 78711.

The amendment is proposed under the Texas Government Code, Chapter 443, which provides the State Preservation Board with the authority to adopt rules concerning the buildings, their contents, and their grounds.

The statute affected by this rule is §111.24.

##### §111.24. Project Change [Order] Policy.

(a) A Change Order is written change to the Contract signed by the Executive Director for the purpose of incorporating a change in the Work or an adjustment in the Contract Sum or the Contract Time [a written order to the Construction Contractor signed by the executive director or his designee and the project architect/engineer after construction has been contracted for. It is preceded by a formal Change proposal or field order similarly initiated].

(b) (No change.)

(c) Project changes exceeding the Board approved construction contingency limits [\$250,000 in cost or exceeding the construction contingency.] shall [in addition to subsection (b) of this section.] require [State Preservation Board hearing and] approval of the State Preservation Board.

(b) The State Preservation Board will be notified at least seven days in advance of any project change in excess of \$250,000.

(e)[(d)] The State Preservation Board will be notified of changes to the contract sum or contract time of any construction contract within 30 days. Regular monthly reports on the status of construction projects and construction contingencies will be distributed to the board. [when any change exceeds \$50,000 within 72 hours. Full documentation will be provided upon request.]

[(e) The State Preservation Board will be notified at 50%, 75%, and 90% consumption of the construction and project contingencies.]

(f) Project changes which, in the opinion of the executive director [or his designee and the architect/engineer], will materially affect the [cost,] aesthetic appearance, design intent, historic restoration intent, space planning criteria, [location and size of rooms] or established distribution of space among the occupying entities shall be reported promptly to the Board members for review and comment [referred to the State Preservation Board for hearing and approval by a two-thirds vote].

(g) Project changes which are not related to construction contracts shall be managed by the Executive Director within the agency budget and appropriation.

(h) All new contracts will be routinely reported to the Board at its next meeting.

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

Issued in Austin, Texas, on July 14, 1993.

TRD-9325779 Dealey Hemdon  
Executive Director  
State Preservation Board

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 463-5495

◆ ◆ ◆  
**TITLE 16. ECONOMIC  
REGULATION**  
**Part III. Texas Alcoholic  
Beverage Commission**  
**Chapter 33. Licensing**

**License and Permit Surcharges**  
• 16 TAC §33.23

The Texas Alcoholic Beverage Commission proposes new §33.23, setting the annual sur-

charge for all holders of certificates, permits or licenses issued by the Commission as required by Texas Alcoholic Beverage Code, §5. 50(b), effective September 1, 1993.

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

For state government, the estimated revenue for each of the first five years is \$5,851,365, with estimated additional cost being insignificant. There will be no fiscal implications for units of local governments.

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

The new section is being proposed pursuant to changes in the Alcoholic Beverage Code by House Bill 1445, 73rd Legislature, Regular Session, 1993, which requires the Texas Alcoholic Beverage Commission to set license and permit fee surcharges over and above the statutory fees set by the Code to cover the difference between the current revenue raised by fees and the appropriation to the commission by the legislature to administer the Alcoholic Beverage Code. In addition, a separate calculation is required to be made which is charged to holders of mixed beverage and private club permits to cover the cost of auditing by the Comptroller of Public Accounts.

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

(a) A surcharge of 20% of all original or renewal certificates, permit, or license fees set by the Texas Alcoholic Beverage Code rounded upward to the nearest five dollars shall be levied against all certificate holders, permittees or licensees.

(1) The surcharge shall apply to each brewpub licensed under Chapter 74, Texas Alcoholic Beverage Code, even through one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code, §32.11, is also exempt from the surcharge.

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

(c) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(d) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

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

Issued in Austin, Texas, on July 19, 1993.

TRD-9326015 Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: August 23, 1993

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

◆ ◆ ◆  
**TITLE 22. EXAMINING  
BOARDS**  
**Part XXXI. Texas State  
Board of Examiners of  
Dietitians**  
**Chapter 711. Dietitians**  
• 22 TAC §§711.1-711.5, 711.8,  
711.9, 711.12-711.15, 711.  
16-711.20

The Texas State Board of Examiners of Dietitians proposes amendments to §§711.1-711.5, 711.8, 711.9, 711.12-711.15, and proposes new §711.16-711.20 concerning licensed dietitians and provisional licensed dietitians.

The amendments and new sections will update existing sections and implement the provisions of Senate Bills 1434 and 674, 73rd Legislature Regular Session, 1993, relating to the regulation of dietitians.

The amendments add new definitions; increase licensure fees; add consumer information provisions; define deceptive advertising; establish time limits for provisional licenses; change late renewal requirements; add criminal convictions related to the profession of dietetics; and various minor changes which clarify meaning without substantial change, improve grammar and style, and clarify inconsistencies in the rules.

The new sections establish procedures for inactive status; mandatory continuing education; temporary license; informal disposition; and default orders.

Becky Berryhill, executive secretary, has determined that there will be fiscal implications as a result of enforcing or administering the rules. The effect on state government will be an estimated increase of revenues of \$44, 820 and additional costs of \$44, 820 for each year of fiscal years 1994-1998. There will be no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Berryhill also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing the section will be to assure the regulation of dietitians continues to identify competent practitioners and that licensees are increasing their knowledge and abilities through continuing education. There will also be benefits from a standardized enforcement process and provision of adequate enforcement authority; and establishment of a standard approach for licensing out-of-state practitioners seeking licensure in Texas. There will be no fiscal implications for small business as a result of enforcing or administering the rules. The economic cost to persons are the fees set out in the body of the rules and the cost for attending continuing education events is estimated at \$100-\$200. There will be no impact on local employment.

Comments on the proposal may be submitted in writing to Becky Berryhill, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183. Comments will be accepted for 30 days from the date of publication in the Texas Register of the proposed section.

The amendments and new sections are proposed under Texas Civil Statutes, Article 4512h, §6, which provide the Texas State Board of Examiners of Dietitians Board with the authority to adopt rules concerning the regulation and licensure of dietitians.

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

[Board of Health—The Texas Board of Health]

**Dietetics**—The professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle to achieve and maintain the health of people. The term includes, without limitation, the development, management, and provision of nutrition [nutritional] services.

**Nutritional services**—Assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice; establishing

priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints; providing nutrition counseling in health and disease; developing, implementing, and managing nutritional care systems; or evaluating, making changes in, and maintaining appropriate standards of quality in food and nutritional care services.

**Nutrition assessment**—The evaluation of the nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake including enteral and parenteral nutrition.

**Nutrition counseling**—Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

#### **§711.2. The Board's Operation.**

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

(i) Reimbursement for expense.

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

[(4) Board-approved requests for board members for out-of-state travel for board activities shall be reported in advance to the deputy commissioner for management and administration of the department on appropriate forms.]

(4)[(5)] Board-approved requests for board staff for out-of-state travel for board activities shall be approved by the deputy commissioner for management and administration of the department on appropriate forms.

(5)[(6)] Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(j)-(l) (No change.)

(m) Official records.

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

(3) Official records may not be taken from board offices; however, persons may obtain photocopies of files upon written request and by paying the cost per page set by the department [State Purchasing and General Services Commission]. Payment shall be made prior to release of the records [and may be made by personal check].

(n)-(o) (No change.)

[(p) Executive secretary.

[(1) The executive secretary of the board shall be an employee of the de-

partment, designated by the Texas commissioner of health as the administrator of board licensing activities, and shall serve at the direction of the board.

[(2) The executive secretary shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board.

[(3) The executive secretary shall exercise general supervision over persons employed in the administration of the Act.

[(4) The executive secretary shall be responsible for the investigation of complaints and for the presentation of formal complaints.

[(5) The executive secretary shall attend all meetings of the board as a nonvoting participant.

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

[(7) The executive secretary shall prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of the Act.

[(8) The executive secretary shall have the responsibility of assembling and evaluating materials submitted by applicants for licensure. Determinations made by the executive secretary are subject to the approval of the board, which shall make the final decisions on the eligibility of all applicants.]

(p)[(q)] Official seal. The official seal of the board shall consist of two concentric circles with the words "Texas State Board of Examiners of Dietitians" circularly arranged about the inner edge of the outermost circle, and in the center of the innermost circle there shall be a five-pointed star, surrounded by the live oak and olive branches common to official state seals.

(q)[(r)] Registry.

(1) Each year the executive secretary[, on behalf of the board of health,] shall publish a registry of current licensees.

(2) The registry shall include, but not be limited to, the name, preferred mailing address, and telephone number of current licensees.

(3) An original copy of the registry will be available for inspection by licensees and members of the public in the office of the executive secretary. Upon receipt of a written request and payment of a fee, the executive secretary shall furnish at

cost a copy to a licensee or member of the public. The cost of a copy of the registry or any portion thereof shall be accordance with the cost guidelines of the department [State Purchasing and General Services Commission].

(r)[(s)] Consumer information. The executive secretary[, on behalf of the board of health, and] with the approval of the board[,] shall publish information of consumer interest which describes the regulatory functions of the board, board procedures to handle and resolve consumer complaints, and the profession of dietetics. [Distribution of consumer information shall follow the department's guidelines for distribution of literature and forms.]

(s)[(t)] Fees.

(1) The board has established reasonable and necessary fees to provide the funds to support the activities listed in paragraphs (2) of this subsection and other activities required by the Licensed Dietician Act (Act).

(2) Schedule of fees for licensure as a dietitian, temporary licensed dietitian, and a provisional licensed dietitian:

(A) application (includes initial license) fee-\$54;

(B) license fee for upgrade of provisional licensed dietitian-\$20;

(C) renewal fee-\$45 [\$24];

(D) late renewal fee: [-\$36.00 (when renewed within 90 days of expiration date);]

(i) \$82.50 when renewed on or within 90 days of expiration; or

(ii) \$90 when renewed later than 90 days but less than one year after expiration;

[(E) license renewal penalty fee-\$24.00 plus all unpaid renewal fee (when license is renewed after 90 days of expiration, but less than two years);]

(E)[(F)] license certificate and identification card replacement fee-\$20;

(F)[(G)] examination fee-\$75 [the fee designated by the commission at the time of the examination or re-examination];[and]

(G)[(H)] application processing fee for preplanned professional experience approval-\$500[\$350]; and[.]

(H) inactive status fee-\$20.

(3) An applicant whose check for the application fee is returned marked insufficient funds, account closed or payment stopped shall be allowed to reinstate the application by remitting to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) An approved applicant whose check for the license fee is returned marked insufficient funds, account closed or payment stopped shall remit to the board a money order or check for guaranteed fund within 30 days of the date of receipt of the board's notice. Otherwise, the application and the approval shall be invalid.

(5) A license whose check for the renewal fee is returned marked insufficient funds, account closed or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be invalid.

(6) Fees paid to the board by applicants are not refundable.

(7) Any remittance submitted to the board in payment of a required fee must be in the form of a personal check, certified check, or money order.

(8) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through rule amendments.

(t)[(u)] Petition for adoption of a rule.

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

(2) Submission of the petition.

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

(B) The petition shall be in writing, shall contain the petitioner's name and address, and shall describe the rule and the reason for it; however, if the executive secretary determines that further information is necessary to assist the board in reaching a decision, the executive secretary may require that the petitioner resubmit the petition and that it contain:

(i) a brief explanation of the proposed rule;

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

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

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

(C) The board may deny a petition which does not contain the information in subparagraph (B) of this paragraph or the information in clauses (i)-(iv) of subparagraph (B) of this paragraph if the executive secretary determines that the latter is necessary.

(D) The petition shall be mailed or delivered to the executive secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183.

(3) Consideration and disposition of the petition.

(A) The executive secretary shall submit a completed [the] petition to the board for its consideration.

(B) Within 60 days after receipt of the petition by the executive secretary, or within 60 days after receipt of a resubmitted petition in accordance with paragraph (2)(B)(i)-(iv) of this subsection, the board shall either:

(i) deny the petition; or

(ii) initiate rule-making procedures by referring the petition to the Rules Committee for its recommendation. The committee shall report its recommendations to the board at its next regular meeting;

(iii) deny parts of the petition and/or institute rule making procedures on parts of the petition.

(C) If the board denies the petition, the executive secretary shall give the petitioner written notice of the board's denial, including the reason(s) for the denial.

(D) If the board initiates rule-making procedures in accordance with the Administrative Procedure and Texas Register Act, §5, the version of the rule



which the board proposes may differ from the version proposed by the petitioner.

(4) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of paragraphs (2) and (3) of this subsection. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

### §711.3. The Profession of Dietetics.

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

(d) Code of ethics. These rules shall constitute a code of ethics as authorized by the Licensed Dietitian Act (Act), §6(b)(1).

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

(3) Supervision of provisional licensed dietitian. A licensed dietitian shall adequately supervise a provisional licensed dietitian or a temporary licensed dietitian for whom the licensee has assumed supervisory responsibility.

(4) Billing information required; prohibited practices.

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

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

(5) Sanctions. A licensee shall be subject to disciplinary action by the board if the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1.

(e) Disclosure. A licensee shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification:

(1) on each written contract for services of a licensee;

(2) on a sign prominently displayed in the primary place of business of each licensee; or

(3) in a bill for service provided by a licensee to a client or third party.

(f) Unlawful false, misleading, or deceptive advertising.

(1) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(2) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) expectation about the results of a health care service or procedure;

(C) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(D) contains a testimonial;

(E) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(F) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(I) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(3) A "health care professional" includes a licensed dietitian, provisional licensed dietitian, temporary

licensed dietitian, or any other person licensed, certified, or registered by the state in a health-related profession.

### §711.4. Academic Requirements for Licensure.

(a) (No change.)

(b) General.

(1)-(6) (No change.)

(7) Persons applying for licensure must possess a baccalaureate or post-baccalaureate degree with a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management.

(8)-(9) (No change.)

### §711.5. Experience Requirements for Examination.

(a) (No change.)

(b) General. Applicants for examination must have satisfactorily completed an approved [a] preplanned, documented professional experience program [experience] or internship in dietetics practice under the supervision of a licensed dietitian or a registered dietitian [in the profession of dietetics approved by the board or the association]. The program or internship and the supervisor must be approved by the board or the association.

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

(c) (No change.)

(d) Guidelines specific to preplanned professional experience programs beyond the undergraduate level.

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

(4) The curriculum guidelines are as follows.

(A)-(D) (No change.)

(E) The curriculum shall include a minimum of 450 [900] clock hours of supervised and directed work experience, as set out in §711.9(b)(2) of this title (relating to Provisional Licensed Dietitians), at a level of professional responsibility equivalent to that of a licensed dietitian, as set out in §711.3(b) of this title (relating to The Profession of Dietetics), plus a minimum of 450 [900] clock hours of planned dietetic learning experiences with stated objectives divided to meet one of the following areas of specialization.

(i)-(iv) (No change.)

(F) (No change.)

(5) (No change.)

(e)-(f) (No change.)

(g) Guidelines specific to dietetic internships.

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

(4) The curriculum guidelines are as follows.

(A)-(B) (No change.)

(C) The curriculum shall include a minimum of 450 [900] clock hours of supervised and directed work experience, as set out in §711.9(b)(2) of this title (relating to Provisional Licensed Dietitians), at a level of professional responsibility equivalent to that of a licensed dietitian, as set out in §711.3(b) of this title (relating to The Profession of Dietetics), plus a minimum of 450 [900] clock hours of planned dietetic learning experiences with stated objective divided to meet one of the following areas of specialization.

(i)-(iv) (No change.)

(5) -(7) (No change.)

#### §711.8. Determination of Eligibility.

(a)-(d) (No change.)

(e) The board may disapprove the application if the person has:

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

(4) failed to remit any applicable fees required in §711.2(s) [§711.2(u)] of this title (relating to the Board's Operations);

(5)-(8) (No change.)

(f)-(h) (No change.)

#### §711.9. Provisional Licensed Dietitians.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for provisional licensed dietitians.

(1) (No change.)

(2) Termination. The supervising licensed dietitian must submit a written notification of termination of supervision to the board and the supervisee within 14 days of when supervision has ceased. The provisional licensed dietitian shall ensure that the supervising licensed dietitian submits the appropriate notification. The board notification of termination of supervision shall include:

(A)-(E) (No change.)

(3)-(5) (No change.)

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

(d) Time limits. A provisional li-

cence is valid for one year from the date it is issued and may be renewed annually not more than twice by the procedures set out at §711.12 of this title (relating to License Renewal).

[(d) Existing supervisory relationships. A person who is a provisional licensed dietitian at the time of adoption of this subsection shall file a supervision contract in accordance with subsection (a)(1) of this section with the board within 60 days of the effective date of this subsection.]

#### §711.12. License Renewal.

(a) (No change.)

(b) General.

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

(4) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure [However, failure] to receive notification from the executive secretary prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(5)-(7) (No change.)

(8) A licensee must comply with applicable continuing education requirements in order to renew a license including the audit process described in §711.17 of this title (relating to Continuing Education Requirements).

(c) (No change.)

(d) Late renewal requirements.

(1) The executive secretary[, by certified mail,] shall inform a person who has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for renewal and the date the license expired.

(2) A person whose license has expired for not more than one year [90 days] may renew the license by submitting to the executive secretary: the license renewal form and appropriate [; the required] late renewal fee[; and a penalty fee that is one-half of the renewal fee]. The renewal is effective if it is mailed to the executive secretary not more than one year [90 days] after the expiration date of the license. The postmark date shall be considered as the date of mailing.

[(3) A person whose license has expired for more than 90 days but less than two years of the expiration date may renew the license by paying to the board the unpaid license renewal fees, plus a late penalty fee that is equal to the renewal fee. The person must submit with the required license renewal form a letter stating the reason for the failure to make a timely renewal.]

(3) [(4)] A person whose license has been expired one year [two years] or more may not renew the license. The person may obtain a new license by [submitting to reexamination and] complying with the current requirements and procedures for obtaining an original [a] license.

(e) Expiration of license.

(1) (No change.)

(2) A person who fails to renew a license after one year [two years] is required to surrender the license certificate and license identification card to the board.

(f) Active duty. If a licensee fails to timely renew his or her license on or after August 1, 1990, because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license in accordance with this subsection.

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

(6) A licensee renewing under this subsection shall be required to submit the same amount of continuing education hours as required for regular renewal.

#### §711.13. Licensing of Persons with Criminal Backgrounds to Be Dietitians and Provisional Dietitians.

(a) (No change.)

(b) Criminal convictions which directly relate to the profession of dietetics.

(1) (No change.)

(2) In considering whether a criminal conviction directly relates to the occupation of a licensed dietitian or provisional licensed dietitian, the board shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for licensure as a dietitian or provisional dietitian. The following felonies and misdemeanors relate to the license of a dietitian or provisional dietitian because these criminal offenses indicate an inability or a tendency to be unable to perform as a licensed dietitian or a provisional licensed dietitian:

(i)-(ii) (No change.)

(iii) a conviction relating to Medicare or Medicaid fraud;

(iv)[(iii)] a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); [and]

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4); and

(VI) insurance claim fraud under the Penal Code, §32.55;

(v)[(iv)] The misdemeanors and felonies listed in clauses (i)-(iii) of paragraph (2)(B) of this subsection are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and these sections;

(C)-(D) (No change.)

(c) (No change.)

**§711.14. Violations, Complaints, and Subsequent Board Actions.**

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

(d) Investigation of complaints.

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

(4) The executive secretary shall determine whether the complaint fits within the category of a serious complaint affecting health or safety of clients or other persons.

(5) If an investigation is done, the investigator shall always attempt to contact the complainant to discuss the complaint.

(6) The board shall use a private investigator only if the department's investigators available to the board have a conflict of interest.

(e)-(f) (No change.)

(g) Formal hearings.

(1) (No change.)

(2) At any time prior to initiating formal hearing procedures, the executive secretary or the Complaint Committee, on its own motion or the motion of the licensee, may request an informal conference with the licensee to discuss the proposed action.]

(2)[(3)] To initiate formal hearing procedures, the executive secretary shall give the applicant or licensee written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the applicant or licensee shall give written notice to the executive secretary that the applicant or licensee either waives the hearing or wants the hearing.

(A) If the person fails to respond within 10 days after receipt of the notice of opportunity, or if the person notifies the executive secretary that the hearing be waived, the person is deemed to have waived the hearing. If the hearing has been waived, the executive secretary may recommend to the board that the license be suspended or revoked, the license suspension be probated, the licensee renewal be denied, or the application be denied. The board may take the final action which the board deems appropriate.

(B) If the person requests a hearing within 10 days after receiving the notice of opportunity for hearing, the executive secretary shall request the department's office of general counsel to initiate formal hearing procedures.

(3)[(4)] When a formal hearing is conducted, the board, meeting in quorum and by a majority of those present and voting, will determine the necessary final action after receiving the hearing officer's recommendation. The complaint committee members shall not participate in the final action.

(h)-(i) (No change.)

(j) Monitoring of licensees. The executive secretary shall monitor each licensee against whom a board order is issued to ascertain that the licensee performs the required acts.

**§711.15. Formal Hearings.**

(a) Purpose. This section covers the formal hearing procedures and practices that will be used by the board in handling suspensions, revocations of licenses, denial of licenses, probating a license suspension, and reprimanding a licensee. The intended effect of these procedures is to implement the contested case provisions of the Administrative Procedure and Texas Register Act (APTRA) and the relevant sections of the Licensed Dietitian Act (Act) and to make the public aware of the procedures and practices.

(b) General provisions.

(1) [Initiating a formal hearing.] The board on its own motion or the executive secretary on [petition or applica-

tion from a person or party] may initiate a formal hearing. The hearing shall be conducted in accordance with the provisions in this section. In the event of conflict between APTRA or other state statutes and these sections, APTRA or other state statutes will prevail over these sections.

(2) [Location.] All formal hearings unless otherwise determined by the hearing examiner or upon agreement of the parties [board] shall be held in Austin, Texas.

(3) The appropriate committee may determine whether a hearing will be held before a hearing examiner or the board. If a hearing examiner is not utilized [by the board], the board shall conduct the formal hearing and contested case proceedings, and all references in this chapter to the hearing examiner shall be references to the board.

(c) Notice requirements.

(1) [General.] The hearing examiner shall give notice of the hearing according to the notice requirements of APTRA [the applicable law or board rules authorizing the hearing. All notices under this subsection must be given not less than 10 days prior to the hearing.

[(2) Content of notice.

[(A) The notice shall contain:

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

[(ii) a statement of the legal authority and jurisdiction under which the hearing is to be held;

[(iii) a reference to the particular section of the statutes and rules involved;

[(iv) a short and plain statement of the matters asserted; and

[(v) a statement that any party can appear in person or by his/her counsel and be heard.

[(B) If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application from a party to the board, a more definite and detailed statement shall be furnished to the party not less than three days prior to the date set for the hearing.]

(2)[(3) Failure to appear after notice.] If a party fails to appear or be represented at a hearing after receiving notice, the hearing examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(3)[(4) Change of address.] All parties, attorneys, or representatives of parties shall timely notify the hearing examiner of any changes in their mailing addresses.

(d) Parties to the hearing.

(1) The parties to hearing shall be the applicant or licensee and the complaints committee or executive secretary, as appropriate. [Justiciable interest. All parties must have a justiciable interest in the proceedings to be designated as parties. All appearances are subject to a motion to strike upon a showing that the party has no justiciable interest in the proceeding.]

(2) [Duties and privileges of a party.] A party has the privilege to participate fully in any prehearing and hearing, to appeal as provided by law, and to perform any and all duties and privileges provided by APTRA and other applicable laws.

(3) Interested persons. Any person not wishing to be designated as a party but desiring only to appear for the purpose of showing support or opposition or to make any general relevant statement showing support or opposition may appear at the hearing and make or file statements.

(4) Time of designation as a party. The hearing examiner may designate parties at a prehearing conference, at the beginning of a hearing, or prior to conclusion of a hearing. No person will be admitted as a party later except upon a finding by the hearing examiner, or the board, of good cause and extenuating circumstances.

(5) Different classifications for parties. In their pleadings, parties may classify themselves as applicants, petitioners, respondents, protestants, complainants, etc., but regardless of such classification, the hearing examiner has the authority to determine and designate their true status whenever necessary.]

(3)[(6) Representation.] A party may appear personally or be represented by counsel [or other authorized representative,] or both.

(7) Consolidation of parties. The hearing examiner may require parties of each class of affected persons to select one person to represent them in the proceedings.]

(e) Subpoena requirements.

(1) [Issuance of subpoena.] On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner shall issue a subpoena addressed to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents at the hearing.

(2) All procedures relating to subpoenas shall be in accordance with Administrative Procedure Texas Register Act. [Good cause. There must be a show of good cause for the subpoena, i.e., the witnesses or documents must have information that is relevant and material to the hearing.]

(3) [Quashing of subpoena.] A party or witness may seek to quash the subpoena or move for a protective order as provided in Texas Rules of Civil Procedure, Rule 166b].

(4) [Witnesses requirements.] Witnesses may be subpoenaed from any place in the State of Texas.

(5) [Documents.] Documents include books, papers, accounts, and similar materials or objects.

(6) [Witness reimbursement.] A witness or deponent described in Administrative Procedure and Texas Register Act, §14(d)(1) [Witnesses subpoenaed] will be paid for [per diem and] mileage, transportation, meals, and lodging expenses and a fee of \$10 a day. [in accordance with those amounts paid to state employees as set out in the current State General Appropriations Bill. The same amounts will be paid by the party at whose request the witness appears. The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by Administrative Procedure Texas Register Act, §14.]

(f) Depositions. The taking and use of depositions in any contested case proceeding shall be governed by APTRA, §14.

(g) Prehearing conferences.

(1) [Purpose.] In a contested case, the hearing examiner, on his own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(A) -(H) (No change.)

(2) [Conduct of conferences.] The hearing examiner will conduct the prehearing conference in such manner and with the necessary authority to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(3) [Minutes.] The hearing examiner shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(4) [Recording orders.] Any action taken at the prehearing conference may be reduced to writing, signed by the parties, and made a part of the record.

(h) The hearing procedures.

(1) (No change.)

(2) Order of presentation.

(A) After making the necessary introductory and explanatory remarks [on the purpose, etc., of the hearing], the hearing examiner will begin receiving testimony and evidence from the witnesses.

(B)-(E) (No change.)

(F) When the parties have concluded their testimony and evidence, the hearing examiner will ask the audience if any interested person desires to make a statement. If so, the interested person will be allowed to make a statement subject to cross-examination and clarifying questions by any party.]

(F)[(G)] The hearing examiner, [After interested persons make statements or if there are no such statements], at the hearing examiner's discretion, may allow final arguments or take the case under advisement, note the time, and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(3) (No change.)

(4) Technical expertise. The hearing examiner may be assisted by a technical expert within the department who has not participated in any proceeding in the case, either directly or indirectly, for the purpose of utilizing the special skills or knowledge of the department.]

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

(5)[(6)] The hearing record. The hearing record will include:

(A) all pleadings, motions, and intermediate rulings;

(B) evidence received or considered;

(C) a statement of matters officially noticed;

(D) questions and offers of proof, objections, and rulings of them;

(E) proposed findings and exceptions;

(F) any decision, opinion, or report by the hearing examiner; and

(G) all staff memoranda or data submitted to or considered by the hearing examiner or members of the board who are involved in making the decision.

(6)[(7)] Recording the hearing.

(A) The hearing examiner shall keep either a stenographic or magnetic tape record of the hearing proceeding. A court reporter may be present to record the hearing.

(B) In those cases when a magnetic tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to duplicate.

(7)[(8)] Assessing the cost of a court reporter and the record of the hearing.

(A) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.

(B) The board shall prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.

(C) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.

(8)[(9)] Rules of evidence. The hearing examiner[, at a hearing, a reopened hearing, or a rehearing] will apply the rules of evidence under Administrative Procedure and Texas Register Act, §14(a), and also the following rules.

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

(B) Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which are typical and representative, and may, at the hearing examiner's discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record [or their representatives] be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.

(C) Exhibits shall be as follows.

(i) Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board. The hearing examiner may require that exhibits of a documentary character not exceed 8 1/2 by 14 inches unless they are folded to the required size. Maps and drawings which are offered as exhibits shall be folded so as not excluded.

(ii) The original of each exhibit offered should be tendered to the hearing examiner or a designee for identifi-

cation and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

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

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

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

(E) When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The hearing examiner may ask such questions of the witness as the hearing examiner deems necessary to satisfy the hearing examiner that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(F) Official notice by the hearing examiner or the board shall be governed by Administrative Procedure and Texas Register Act, §14(q). Further, official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The hearing examiner shall indicate during the course of a hearing that information of which the hearing examiner will take official notice. When a hearing examiner's findings are based upon official notice as a material fact not appearing in the evidence of record, the hearing examiner shall set forth in the proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have

been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the hearing examiner's proposal for decision.

(9) [(10)] Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by [stipulation,] agreed settlement[, consent] order[, or] default order.

(10)[(11)] Agreements in writing. No stipulation or agreement between the parties[, their attorneys, or representations,] with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(i) Action after the hearing.

(1) Reopening of hearing for new evidence.

(A)-(B) (No change.)

(C) Notice of any reopened hearing shall be sufficient by notifying all [previously designated] parties of same, by certified mail, return receipt requested.

(2) (No change.)

(3) Filing. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the hearing examiner. The[; and further, the] party filing such instrument shall provide copies of the same to all other parties of record by first class United States mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(4) Final orders or decisions.

(A) The final order or decision will be rendered by the board [meeting in quorum and by a majority of those present and voting]. The board is not required to adopt the recommendation of a hearing examiner and may take action as it deems appropriate and lawful.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law[, either in the body of the

order, by attachment, or by reference to an examiner's proposal for decision].

(C) All[Unless otherwise permitted by statute or by these sections, all] final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders may be issued by the hearing examiner in accordance with the order of appointment.

(D) (No change.)

(5) Motion for rehearing. A motion for rehearing shall be governed by Administrative Procedure and Texas Register Act, §16, or other pertinent statute and shall be addressed to the board[executive secretary] and filed with the hearing examiner.

(6) (No change.)

[(j)] Ex parte consultations. All matters regarding ex parte consultations, shall be governed by the provisions of APTRA, §17.]

#### §711.16. Inactive Status.

(a) A licensed dietitian may request that his or her license be declared inactive by written request to the board prior to the expiration of the license. The request must include the inactive status fee. Inactive status shall not be granted to persons whose licenses are not current. Inactive status periods shall not exceed two years. An additional inactive status fee must be paid on or before the end of the first year of inactive status to remain in inactive status an additional year.

(b) An inactive status period shall begin on the first day of the month following board approval.

(c) If the licensed dietitian wishes to reactivate the license, the licensed dietitian:

(1) must pay all accrued renewal fees (with a maximum of two renewal fees); and

(2) must furnish proof of having earned, during the inactive period (minimum one year, maximum two years) six approved continuing education hours. Proof is to be furnished at the time of reactivation.

(d) A license that is not reactivated within the two-year period may not be renewed, and the license may not be restored, reissued, or reinstated thereafter, but that person may reapply for and obtain a new license if requirements of the Licensed Dietitian Act (Act) are met.

(e) A person may not represent himself or herself as a licensed dietitian during the period of inactive status.

(f) A person is subject to investigation and action under §711.14 of this title (relating to Violations, Complaints, and Subsequent Board Actions) during the period of inactive status.

(g) A licensed dietitian may return to active status by written request to, and approval by, the board. Active status shall begin the first day of the month following board approval.

(h) Upon return to active status, the licensed dietitian's next continuing education cycle will begin on the first day of the month following the licensed dietitian's birth month.

#### §711.17. Continuing Education Requirements.

(a) The purpose of this section is to establish the continuing education requirements a licensee shall meet to maintain licensure. The requirements are intended to maintain and improve the quality of services provided to the public by licensed dietitians and provisional licensed dietitians. Continuing education credit includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of licensed dietitians and provisionally licensed dietitians, thus improving nutritional care to the public.

(b) Proof of having earned a minimum of six clock hours of continuing education credit shall be required at the time of renewal of each license after September 1, 1994.

(1) The hours must have been completed within 12 months prior to the date of expiration of the license.

(2) The hours must be offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.

(c) The licensee shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the board at the time of renewal unless the licensee has been selected for audit by the board. Only the completed continuing education report form should accompany the renewal form and fee if the licensee has not been selected for audit.

(d) The audit process shall be as follows.

(1) The board shall select for audit a random sample of licensees for each renewal month. Audit forms shall be sent to the selected licensees at the time the renewal notice is mailed.

(2) All licensees selected for audit will furnish documentation such as official transcripts, certificates, diplomas, receipts, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the board, to verify proof of having earned the continuing education hours listed on the continuing education report form. The documentation must be provided at the time the renewal form is returned to the board.

(3) Failure to timely furnish this information or knowingly providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee.

(e) A licensee who has failed to complete the requirements for continuing education may be granted a 90-day extension to the continuing education period by the executive secretary.

(1) The request for an extension of the continuing education period must be made in writing prior to the expiration of the license.

(2) A subsequent continuing education period shall end one year from the date the previous continuing education period expired, not the date of the end of the extension period.

(3) Credit earned during the extension period may only be applied to the previous continuing education period.

(4) A person who fails to complete continuing education requirements for renewal holds an expired license and may not use the titles "licensed dietitian" or "provisional licensed dietitian" during the extension period.

(5) A license may be renewed upon completion of the required continuing education within the given extension period, submission of the license renewal form, and payment of the applicable late renewal fee.

(h) A person who fails to complete continuing education requirements for renewal and failed to request an extension to the continuing education period may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(i) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses related to dietetics;

(2) clinical courses related to dietetics;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in dietetics; or

(4) self-study modules.

(j) Activities unacceptable as continuing education for which the board may not grant continuing education credit are:

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

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

(3) any continuing education activity completed before or after the period of time described in subsection (b)(1) or (e) of this section;

(4) self-assessment questionnaire or activities;

(5) activities described in subsection (i) of this section which have been completed more than once during the continuing education period;

(6) performance of duties that are routine job duties or requirements; or

(7) instructing or presenting continuing education programs or activities.

(k) Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) An activity which meets the criteria of subsection (i) (2) or (3) of this section shall be credited on a one-for-one basis with one clock hour credit for each clock hour spent in the continuing education experience.

#### *§711.18. Temporary License.*

(a) Purpose. The purpose of this section is to set out the application procedures for a temporary license.

(b) Requirements. An applicant for a temporary license shall submit:

(1) an application and fee in accordance with §711.7 of this title (relating to Application Procedures);

(2) a current copy of the law and rules of the other state, District of Columbia, or territory of the United States governing its licensing and regulation of dietitians;

(3) verification acceptable to the Board that the applicant has passed the commission's examination/or an examination offered by another state; the District of

Columbia; or a territory of the United States for licensure as a dietitian;

(4) verification that the licensee is or will be supervised by a licensed dietitian in the same manner as set out in §711.9 of the title (relating to Provisional Licensed Dietitians).

(c) Time limit. A temporary license is valid for 180 days, until the date the board approves or denies the temporary licensee's application for a license, or until the applicant is notified that he or she has failed the first examination for which the applicant was eligible, whichever is earlier. A temporary license is not subject to renewal or extension for any reason. A person whose temporary license has expired is not eligible to receive another temporary license.

(d) Status change. The board shall issue a license to the holder of a temporary license after:

(1) the temporary licensee passes the examination required for licensure by the board or becomes a registered dietitian after completion of the commission's examination;

(2) the board verifies that the temporary licensee has met the academic requirements set out in §711.4 of this title (relating to Academic Requirements for Licensure) and the experience requirements in §711.5 of this title (relating to Experience Requirements for Examination); and

(3) the temporary licensee satisfies any other requirement under the Licensed Dietitian Act and these rules.

#### *§711.19. Informal Disposition.*

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

(b) If the executive secretary or the complaints committee of the board determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive secretary or the complaints committee.

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

(d) The executive secretary shall decide upon the time, date and place of the settlement conference and provide written notice to the licensee or applicant of the

same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten day notice requirement.

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

(A) the nature of the alleged violation;

(B) that the licensee may be represented by legal counsel;

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

(D) that board members may be present;

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

(F) that the licensee's or applicant's attendance and participation is voluntary;

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

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

(2) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference.

(e) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is cancelled.

(f) Members of the complaints committee may be present at a settlement conference.

(g) The settlement conference shall be informal and shall not follow the proce-

dures established in this chapter for contested cases and formal hearings.

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

(i) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference. The board members or executive secretary may call upon the attorney at any time for assistance in the settlement conference.

(j) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(k) Access to the board's investigative file may be prohibited or limited in accordance with Texas Civil Statutes, Article 6252-13a and the Administrative Procedure and Texas Register Act (APTRA).

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

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

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

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

(p) The licensee or applicant may either accept or reject at the conference the settlement recommendations. If the recommendations are accepted, an agreed settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within

ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

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

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

(s) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

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

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

(v) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with Administrative Procedure and Texas Register Act, §18(c).

(w) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Texas Civil Statute, Article 6252-13a and Administrative Procedure and Texas Register Act, §18(c).

(1) If the executive secretary or complaints committee determines that an informal conference shall not be held, the executive secretary shall give written notice to the licensee or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Dietitian Act and this chapter.



(2) The complainant shall be sent a copy of the written notice. The complainant shall be informed that he or she may also submit a written statement to the board office.

#### §711.20. Default Orders.

(a) If a right to a hearing is waived under §711.14(g)(2)(A) of this title (relating to Violations, Complaints, and Subsequent Board Actions) or §711.15(c)(2) of this title (relating to Formal Hearings), the board shall consider an order taking appropriate disciplinary action against the licensee as described in the written notice to the licensee or applicant.

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

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

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

Issued in Austin, Texas, on July 16, 1993.

TRD-8325944      Patsy Greer  
Chairman  
Texas State Board of  
Examiners of Dietitians

Earliest possible date of adoption: August 23, 1993

For further information, please call: (512) 834-6601

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 3. Life, Accident and Health

##### Subchapter FF. Credit Life and Accident and Health Insurance

##### Responsibilities and Obligations of Insurance Companies and Their Agents and Representatives

###### • 28 TAC §3.6011

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2039, scheduled for 2:00 p.m. August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new §3.6011, concerning the responsibility and obligation of an insurer to provide a copy of a TD-promulgated form

entitled Consumer Bill of Rights for Credit Life, Credit Disability and Involuntary Unemployment Insurance with each new policy and certificate of credit life, credit disability, and involuntary unemployment insurance. The new section provides that all insurers must provide the Consumer Bill of Rights for Credit Life, Credit Disability and Involuntary Unemployment Insurance with each policy and certificate of credit life, credit disability, and involuntary unemployment insurance. That Consumer Bill of Rights must also accompany each renewal notice for credit life, credit disability, and involuntary unemployment insurance, unless the current version of that Consumer Bill of Rights has been previously provided to the insured by the insurer. Form CL-CD-IU-CBR, Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment Insurance, is filed with the Office of the Secretary of State, Texas Register Section, and incorporated in the rule by reference. The form can be obtained from the Texas Department of Insurance, Publications Department, MC 108-5A, P.O. Box 149104, Austin, Texas 78714-9104. A Spanish-language version of the form will be promulgated at a later date.

Max Ryan, director of credit insurance, has determined that for the first five-year period the proposed rule will be in effect, there will be no fiscal implications for local government as a result of enforcing or administering the rule, and there will be no effect on local employment or the local economy. There will be an annual cost to state government of approximately \$28,000 to cover the expenses of implementing this bill for the first five-year period the proposed rule will be in effect. There is no anticipated loss or increase in revenue to state or local government as a result of these amendments to this rule. Based upon the cost per hour of labor, the cost of compliance for small businesses affected by the proposed rule will be the same as the cost of compliance for the largest businesses.

Mr. Ryan also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing this rule is the benefit of increasing the knowledge of the consumer so that the consumer can make better choices in purchasing credit life, credit disability and involuntary unemployment insurance and can enforce his or her rights under the policies. The anticipated economic cost to entities who are required to comply with the proposed amendment to this section is \$200 to \$18,000, annually, for the first year of the first five year period the proposed rule is in effect, depending upon the method of compliance chosen by the entity and the entity's volume of business. The anticipated economic cost to those entities for the second through the fifth year of the first five year period the proposed rule is in effect, depending upon the method of compliance, and the entity's volume of business, is \$200 to \$9,000.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within thirty 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, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Max Ryan, Director, Credit Insurance, Mail Code 106-1C, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104. Comments may also be provided at the public hearing which has been scheduled for August 30, 1993, at 2:00 p.m. at the Texas Department of Insurance, Room 100, 333 Guadalupe, Austin.

The new rule is proposed under the Insurance Code, Articles 1.35A, 3.53, 21.79E, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.35A(h)(7), requires the Office of Public Insurance Counsel to submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the board, to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department. The Insurance Code, Article 3.53, authorizes the board to issue such rules and regulations as it deems appropriate for the regulation of credit life insurance and credit accident and health insurance. The Insurance Code, Article 21.79E, authorizes the writing of involuntary unemployment insurance. The Insurance Code, Article 1.04(b), provides the board with authority to determine rules in accordance with the laws of this state. 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 requirements of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency.

The following are the statutes affected by this rule: the Insurance Code, Articles 1.10, 1.35, 1.35A, 1.35D, 1.37, 3.44, 3.53, 5.13-2, 5.14, 5.15, 21.16, 21.17, 21.18, 21.21, 21.21-2, 21.55, 21.71, and 21.79E.

§3.6011. *Responsibility and Obligation of Insurers to Provide Copies of Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment Insurance to Each Insured.*

(a) All insurers writing credit life, credit disability, and involuntary unemployment insurance policies must provide with each new policy and certificate of credit life, credit disability, and involuntary unemployment insurance a copy of the Texas Department of Insurance form CL-CD-IU-CBR. This form, Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment Insurance, is filed with the Office of the Secretary of State, Texas Register Section, and is incorporated in this rule by reference. The form can be obtained from the Texas Department of Insurance, Publications Department, MC 108-5A, P. O. Box 149104, Austin, Texas 78714-9104. Form CL-CD-IU-CBR, Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment

Insurance shall accompany each renewal notice for credit life, credit disability, and involuntary unemployment insurance unless the current version of the form has been previously provided to the insured by the insurer.

(b) Insurers may reproduce Form CL-CD-IU-CBR for the distribution required by subsection (a) of this section. Alternatively, insurers may generate the form on their own equipment. If the form is generated by the insurers, it must appear in no less than 10-point type and be on separate pages with no other text on those pages.

(c) The Texas Department of Insurance will promulgate a Spanish-language version of the Consumer Bill of Rights contained in Form CL-CD-IU-CBR which will be filed with the Secretary of State's Office. Following promulgation of the Spanish-language version, the Spanish-language version of the Consumer Bill of Rights must be provided to any consumer who requests it from the company.

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

Issued in Austin, Texas, on July 19, 1993.

TRD-9326016 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: August 23, 1993

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

## Chapter 5. Property and Casualty Insurance

### Subchapter G. Workers' Compensation Insurance

#### Workers Compensation Insurance Subscriber Notices

##### • 28 TAC §§5.6702-5.6707

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

The State Board of Insurance of the Texas Department of Insurance proposes the repeal of §§5.6702-5.6707, concerning, relating to workers' compensation insurance subscriber notices. These sections are repealed and the collection of subscriber notice data is transferred to the Texas Workers' Compensation Commission, pursuant to §§1.16-1.20 of House Bill Number 1461 (Sunset Bill), 73rd Texas Legislature, effective September 1, 1993.

Nancy Moore, Deputy Insurance Commissioner for Workers' Compensation Insurance, has determined that for the first five-year period the proposed repeal will be in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the repeal, and there will be no effect on the local employment or local economy.

Ms. Moore 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 is that the agency that has requirement for the subscriber notice information will also be the agency responsible for its collection and processing. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the repeal.

In order for a comment to be considered as officially filed with the State Board of Insurance, a copy must be submitted in writing within 30 days after publication of the proposed rule in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Nancy Moore, Deputy Insurance Commissioner for Workers' Compensation Division, Texas Department of Insurance, P.O. Box 149092, Mail Code 202-1A, Austin, Texas 78714-9092.

The repeal is proposed under the Insurance Code, Article 1.04, and Texas Civil Statutes, 6252-13a, §4 and §5, implementing §§1.16-1.20 of House Bill 1461 (Sunset Bill), 73rd Texas Legislature. The Insurance Code, Article 1.04(b), authorizes the board to determine rules in accordance with the laws of this state. 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 requirements of available procedures and prescribe the procedures for adoption of rules by state administrative agency. The repeal affects the collection and maintenance of subscriber notice data required to be collected and maintained in accordance with Texas Civil Statutes, Article 8308 (Texas Workers' Compensation Act), §3.27.

§5.6702. *Insurance Company Notice of Employer Coverage.*

§5.6703. *Insurance Company Notice of Cancellation/Non-Renewal of Employer Coverage.*

§5.6704. *Employer Filing Required for Non-Coverage.*

§5.6705. *Employer Termination of Workers' Compensation Insurance*

§5.6706. *Self-Insured Governmental Entity-Notice of Insurance, Change of Insurance Company or Renewal of Coverage.*

##### §5.6707. *Incorporation by Reference.*

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

Issued in Austin, Texas, on July 19, 1993.

TRD-9326025 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: August 23, 1993.

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

## Subchapter J. Rules to Implement the Amusement Ride Safety Inspection and Insurance Act

### • 28 TAC §§5.9005-5.9008

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2033, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed repeal of §§5.9005-5.9008, concerning the requirements for the Amusement Ride Safety Inspection and Insurance Act, Article 21.60 of the Insurance Code. The repeal of §§5.9005-5.9008 is necessary to enable the board simultaneously to adopt new §§5.9005 and §5.9006, which replace the repealed §§5.9005 and §5.9006 with new provisions concerning the Amusement Ride Safety Inspection and Insurance Act and renumber and make administrative changes to §§5.9005-5.9008 as §§5.9007-5.9010. Notification appears elsewhere in this issue of the *Texas Register* of the proposed new sections which replace the repealed sections.

Robert L. Dentino, director of loss control, has determined that for the first five-year period the proposed repeal will be in effect there will be no fiscal impact on state or local government as a result of enforcing or administering the repeal. There will be no effect on local employment or local economy.

Mr. Dentino also has determined that for each year of the first five years the repeal is in effect the public benefits anticipated as a result of enforcing the repeal will be more efficient administrative regulation of the Amusement Ride Safety Inspection and Insurance Act. 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, to be considered by the State Board of Insurance must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Mail Code, 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Robert L.

Dentino, Director of Loss Control, Mail Code 105-9A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78714-9104.

The repeals are proposed under the Insurance Code, Articles 21.60 and 1.04, and Texas Civil Statutes, Article 6252-13a §4 and §5. The Insurance Code, Article 21.60, authorizes rules relating to the administration and enforcement of the Amusement Ride Safety Inspection and Insurance Act. 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 of a state administrative agency.

The following articles of the Insurance Code are affected by this repeal: §§5.9005-5.9008. The Insurance Code, Article 21.60.

§5.9005. *Quarterly Injury Reports.*

§5.9006. *Filing Affidavit.*

§5.9007. *Board Information Request.*

§5.9008. *Board Confirmation of Required Insurance and Inspection Certificate; Rule Construction.*

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325978

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

Earliest possible date of adoption: August 23, 1993

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

◆ ◆ ◆  
• 28 TAC §§5.9001-5.9014

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

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2032, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendments to §§5.9001-5.9004, and new §§5.9005-5.9014, concerning the Amusement Ride Safety Inspection and Insurance Act. The amendments and new sections to Subchapter J are necessary to clarify and to better define the scope of amusement rides operating in Texas; to clarify the criteria for amusement ride inspections; to establish

a system to validate the qualifications of inspectors conducting amusement ride inspections; and to clarify the requirements of the Act. These sections provide safety inspection standards and insurance minimums on amusement ride owner/operators to protect the public in their expectation of a safe, controlled, and insured amusement ride. The proposal of new §§5.9005-5.9006 is simultaneous with the proposed repeal of present §§5.9005-5.9008. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. New §5.9005 (relating to Qualifications of Personnel Conducting Safety Inspections of Amusement Rides and Devices) replaces existing §5.9005 (relating to Quarterly Injury Reports). New §5.9006 (relating to Designation of Safety Inspector for Amusement Ride and Devices) replaces existing §5.9006 (relating to Filing Affidavit). New §5.9007 (relating to Quarterly Injury Reports) replaces existing §5.9007 (relating to Board Information Request). New §5.9008 (relating to Filing Affidavit) replaces existing §5.9008 (relating to Board Confirmation of Required Insurance and Inspection Certificate; Rule Construction). Proposal of these sections includes the adoption by reference of new and revised forms for use by all insurers and amusement ride owners/operators subject to the Insurance Code, Article 21.60. The board has filed a copy of the forms with the Secretary of State's office, Texas Register section. Persons desiring copies of the forms can obtain such from the Texas Department of Insurance, Loss Control Regulation Division, Mail Code 105-9A, P.O. Box 149104, Austin, Texas 78714-9104. Copies are also available for pickup from the William P. Hobby State Office Building, Loss Control Regulation Division, 333 Guadalupe, Austin.

Robert L. Dentino, director of loss control regulation, has determined that, for the first five-year period the proposed changes are in effect, there will be no fiscal implications for state or local government. For amusement ride owners/operators, the fiscal impact as a result of implementing, administering or enforcing these sections, will be limited to the costs of having a qualified safety inspection conducted which could range from less than \$100.00 up to \$300.00 depending on the number and complexity of rides to be inspected. The majority of amusement rides in Texas are inspected due to an insurer's underwriting requirements and the cost is absorbed by the agent, the insurer or the owner/operator based on policy negotiations and not as a requirement of Article 21.60. There will be no effect on local employment or the local economy.

Mr. Dentino also has determined that, for each year of the first five years that these sections are in effect, the public benefit anticipated as a result of implementing and enforcing these sections, will be more effective regulation of the owner/operator and inspection of amusement rides, and enhanced guidance to insurance companies providing insurance for amusement ride owner/operators in Texas. There is no anticipated difference in cost of compliance between small and large business. Except as noted in the fiscal note, there is no anticipated economic cost to persons who are required to comply with the sections, as proposed.

Comments on the proposal to be considered by the State Board of Insurance must be submitted within 30 days after publication of the proposed sections in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Robert Dentino, Director, Loss Control Regulation, Mail Code 105-9A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately to the Chief Clerk's Office.

The proposed changes are made under the Insurance Code, Articles 21.60 and 1.04 and Texas Civil Statutes, Article 6252-13a §4 and §5. The Insurance Code, Article 21.60 authorizes rules relating to the administration and enforcement of the Amusement Ride Safety Inspection and Insurance Act. 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 of a state administrative agency.

The following articles of the Insurance Code are affected by these rules: The Insurance Code, Article 21.60

§5.9001. *Purpose and Scope.* It is the purpose of this subchapter to aid in implementing the Amusement Ride Safety Inspection and Insurance Act (hereinafter referred to as the Act). The provisions of this subchapter are in addition to, and not in lieu of, the provisions of the Act (the Insurance Code, Article 21.60). This subchapter applies to:

(1)-(4) (No change.)

(5) any agent or representative of any insurer, including surplus lines agents, as defined in the Insurance Code, Article 1.14-2, and agents of any nonadmitted company; [and]

(6) any independently procured policy subject to the Insurance Code, Article 1.14-1, providing bodily injury liability insurance for amusement rides; and[.]

(7) any inspector working as an independent operator or as an employee of an insurance carrier performing amusement ride inspections on behalf of, or under contract with, an insurance carrier.

§5.9002. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Amusement ride—Any mechanical, gravity or water device or devices that carry or convey passengers along, around, or over a fixed or restricted route or course

or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement, but such term does not include:

(A)-(B) (No change.)

ASTM-The American Society for Testing and Materials.

[Board-The State Board of Insurance.]

Inspector-A person qualified by training, education, or experience to conduct safety inspections of amusement rides or devices on behalf of an insurance company and in accordance with; the American Society for Testing and Materials (ASTM), the manufacturer's standards and criteria; or standards established by the insurance company.

Inspection-A procedure to be conducted by a competent individual to determine whether an amusement ride or device is being assembled, maintained, tested, operated, and inspected in accordance with ASTM, the manufacturer's, or insurer's standards, whichever is the most stringent, and that determines the current operational safety of the ride or device.

TDI-The Texas Department of Insurance.

**§5.9003. Administration and Enforcement.** The Texas Department of Insurance [board] is required by the Act, §3, to administer and enforce the Act. Persons operating amusement rides must pay a fee of \$20 per year for each amusement ride subject to the Act. The fee payment shall accompany the insurance policy and amusement ride inspection certificate (TDI [SBI] Form AR-100, Revised 6/93) required by the Act, §4, and by §5.9004 of this title (relating to Amusement Ride Operator Requirements). The fees shall be paid by certified check or money order made payable to the Texas Department [State Board] of Insurance. The applicant shall attach the certified check or money order to the inspection certificate (TDI [SBI] Form AR-100, Revised 6/93) The certified check or money order may be one check or money order for the total amount of fees for all rides or a separate check for each ride.

**§5.9004. Amusement Ride Operation Requirements.** A person may not operate an amusement ride unless such person has satisfied and is continuing to satisfy the following requirements.

(1) Such person must file with TDI [the board] the insurance policy or a photocopy of the insurance policy certifying that the policy is a true copy of the insurance policy provided to the insured as required by the Act, §4(a)(2). The Act, §4(a)(2), requires that any person who oper-

ates an amusement ride must have currently in force an insurance policy written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by the Insurance Code, Article 1.14-2, or an independently procured policy subject to the Insurance Code, Article 1.14-1, in an amount of not less than \$100,000 per occurrence with a \$300,000 annual aggregate for Class A amusement rides and an amount of not less than \$1 million per occurrence for Class B amusement rides insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride. The policy shall apply on a per occurrence basis to bodily injury. Combined single limit policies covering bodily injury and property damage or any other coverage combined with bodily injury will not be acceptable. The following requirements must also be met.

(A) The policy or certified photocopy of the policy must be complete, including all applicable coverage forms and endorsements. Certificates of insurance will not be acceptable for this purpose.

(B) The policy must contain a schedule listing by name and serial number of each amusement ride insured by the policy. In the event of additions or deletions of amusement rides during the policy term, such changes shall be shown on a change endorsement, a copy of which must be submitted to TDI [the board]. Additions will also require an inspection certificate (TDI [State Board of Insurance] Form AR-100, Revised 6/93) and a \$20 annual administration [inspection] fee for each amusement ride to be submitted to TDI [filed with the board] prior to any operation of the added amusement ride. Additions or deletions shall be filed no later than 10 days after the change.

(C) In the event of policy cancellation by either the insured owner/operator or the insurance company, the company shall furnish notice of such cancellation to TDI [the board] as soon as possible, but not later than 10 days prior to cancellation.

(D) The owner/operator will provide to any sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public, a copy of the required insurance policy limits of coverage and the inspection certificate.

(E) If the owner/operator obtains a new amusement ride device from the manufacturer, the new ride

shall be added to the insurance policy and a copy of the endorsement submitted to TDI. However, inspection of said ride may be delayed at the discretion of the insurance company until the next cycle of annual inspections are required.

(2) Such person must also file the original [an] amusement ride inspection certificate (TDI [SBI] Form AR-100, Revised 6/93) [or a photocopy of such certificate.] certifying with respect to each amusement ride the matters required by the Act, §(4)(a)(1). A separate inspection certificate is required for each amusement ride showing the name, serial number, [and] manufacturer of the ride, [is required] the inspector's name, the owner/operator, a picture of the ride in an operable state taken at the time of the inspection, and other information as requested. The serial number and name/description of the amusement ride shall coincide with the same information identified on the insurance policy. If major components of the ride, i.e., the crane used in a bungee operation, are interchangeable; the name, serial number, and manufacturer of the inspected component shall be included on the inspection certificate. The inspection certificate is valid for a period of one year, and for expedience in processing, shall coincide with the effective date of the insurance policy. The inspection shall be conducted by the insurer or a person with whom the insurer has contracted. The inspector shall provide both the insurer and owner/operator with a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage and is covered by the insurance required by §5.9004(1) of this title (relating to Amusement Ride Operations Requirements).

(A) The inspection certificate shall not be submitted by the inspector or insurer until all discrepancies have been resolved [If an inspection reveals that an amusement ride does not meet the insurance company's standards for coverage, the inspection certificate shall specifically describe the hazard(s) and all [the] necessary repair(s) or replacement(s) required for the amusement ride to meet the standards for coverage have been made. [It shall be the responsibility of the owner or operator of the amusement ride to make the necessary repair(s) or replacement(s) before the amusement ride is offered for public use.]

(B) The methods to test the stress and wear related damage of critical parts shall be through the use of the manufacturer's checklist/guidelines, ASTM standards for amusement rides and devices, or the insurer's criteria, whichever is the most stringent. The in-

spection shall include a review of the owner/operator's inspection and maintenance program in accordance with ASTM practice or the manufacturer's guidelines/inspection criteria. The inspection shall be conducted with the amusement ride or device in an operable state and include an evaluation of the device for a minimum of one complete operating cycle. [Before the amusement ride is operated, a supplemental amusement ride inspection certificate (SBI Form AR-100) shall be filed with the board after necessary repair(s) and/or replacement(s) have been made and inspected. An additional annual \$20 fee is not required for supplemental inspection certificates.]

(C) If the amusement ride or device consists of interchangeable major components, such as cranes used in bungee jumping operations, the crane or major component used during the inspection shall be considered an integral part of the amusement ride and the inspection certificate shall include the manufacturer and serial number of the crane or major component inspected with the amusement ride. If the inspected crane or major component is replaced by another unit, a new inspection is required to include the new identification and serial number of the replacement unit.

(D) Any bungee jumping amusement device shall include a safety net or air bag as an integral part of the ride. The safety net or air bag shall be of sufficient size to cover the jump zone. The safety net or air bag shall be rated for the maximum free fall height possible from the jump platform used. If the jump area is over water, the water must be of sufficient depth to provide an adequate safety cushion. The safety net or air bag shall be inspected as an integral part of the amusement ride. [It shall be the responsibility of the amusement ride owner or operator to request an insurance policy and inspection in such time to permit the insurance company to complete the inspection and policy issuance prior to any operation of the amusement ride. It shall be the responsibility of the insurance company, if it chooses to provide coverage, to furnish the insured the policy and inspection certificate required to be filed with the board in a timely fashion] .

(E) The inspection certificate shall include a schedule of operating locations and dates for the one year duration of the certificate. If the dates and locations are not known at the time of inspection, this information shall be provided by the owner/operator to TDI, Loss Control Regulation Division, a minimum

of 10 days in advance of any public operation. Failure to provide a current location itinerary shall constitute adequate grounds for forfeiture of approval to operate in the State and may subject the owner/operator to enforcement action by the Attorney General's Office or appropriate local authority on behalf of TDI.

(F) The inspection certificate shall be signed by a representative of the insurer.

(G) If the amusement ride or device does not meet the inspection standards, the amusement ride shall not be operated until all necessary repair(s) and/or replacement(s) have been made and the ride reinspected and an inspection certificate issued.

(H)[(C)] The insurer or safety inspector [person] with whom the insurer has contracted to make the inspection must be professionally qualified to perform the inspection, as set forth in §5.9005.

(I) It shall be the responsibility of the amusement ride owner/operator to complete the following prior to any operation of the ride:

(i) request the insurer to certify that the insurance policy and the inspection certificate are true copies by an official of the insurer;

(ii) receive the completed policy and inspection certificate from the insurer if they elect to provide coverage;

(iii) submit a certified copy of the insurance policy and the original inspection certificate to TDI for review. A planning factor of 10 days should be allowed for TDI review and approval prior to any operation of the ride. Errors of omission or commission on either policy or inspection certificate may delay TDI approval;

(iv) immediately after any injury or death involving equipment failure, structural failure or operator error, the amusement ride/device shall be closed for public use until a new inspection is performed and an inspection certificate is submitted to TDI;

(J)[(E)] TDI [SBI] Form AR-100, Revised 6/93, [(Revised 9-87)] is adopted herein by reference and shall be used for each filing of an amusement ride inspection certificate required by this subchapter. This form (the Amusement Ride Inspection Certificate) is published by

the Texas Department [State Board] of Insurance and copies of the form may be obtained from the Amusement Ride Regulation Section, Loss Control Regulation Division, Mail Code 105-9A, Texas Department [State Board] of Insurance, P.O. Box 149104, [1110 San Jacinto Boulevard.] Austin, Texas 78714-9104 [78701-1998].

(K) The inspection certificate, insurance policy, and administration fee shall be submitted to TDI, Loss Control Regulation Division, for review. If the inspection certificate and insurance policy meet the requirements of this subchapter, the inspection certificate will be date-stamped and forwarded to the owner/operator with TDI Form AR-101. Form AR-101 will indicate the expiration date of the insurance policy and shall be affixed to a major component of the amusement ride in a location visible to the ride participants.

(L) Safety services inspectors from the Loss Control Regulation Division of TDI may inspect any amusement ride at any time for compliance with the Insurance Code, Article 21.60, or this subchapter.

(3) Renewal of the policy or inspection certificate shall be completed with sufficient lead time to provide these documents to TDI with a minimum of 10 working days to review and approve the documents prior to the expiration of either the policy or the inspection certificate. [Such person must provide the certificate required by the Act, §4(a)(4), and the certificate must certify that the insurance required by the Act will continue in effect for the period of time the amusement ride is being offered for use by the public.]

(A) In the event of policy cancellation or expiration, the policy shall promptly be replaced or renewed without any lapse in coverage while the amusement ride is offered for use by the public. Any operation without a valid and current insurance policy and current inspection certificate constitutes an illegal operation and is subject to issuance of an injunction to cease operation. The sponsor, lessor, landowner, or other person responsible for an amusement ride [being] offered for use by the public shall be notified of the coverage discontinuance.

(B) A renewal certificate of insurance [or a photocopy of the declaration page of the owner's/operator's amusement ride liability policy] will be acceptable for the purpose of this paragraph, if the renewal certificate [or declaration page] shows:

(i) insurance coverage against liability for injury to persons arising out of the use of the amusement ride/device;

(ii) an amount of insurance of not less than \$100,000 per bodily injury occurrence with a \$300,000 annual aggregate for Class A amusement rides and an amount of insurance of not less than \$1 million per bodily injury occurrence for Class B amusement rides; and

(iii) a policy term that includes the period of time during which the amusement ride will be offered for public use.

**§5.9005. Qualifications of Personnel Conducting Safety Inspections of Amusement Rides and Devices.**

(a) To conduct required safety inspections on amusement rides and devices in accordance with the Act, the insurer may employ qualified inspectors, retain qualified independent contractors, or contract with the insured to have the amusement ride or device inspected by a qualified inspector. If the inspector does not have personal qualifications on record with TDI through the procedures established in §5.9006 of this subchapter, the insurer shall provide on request of TDI, the qualifications of the person or persons conducting the inspection. At the discretion of TDI, this qualification shall be provided to TDI prior to public operation of the amusement ride or device. To be qualified to conduct safety inspections on amusement rides or devices in Texas, an individual shall obtain a minimum of 10 points using the criteria described in paragraphs (1)-(3) of this subsection.

(1) Education. Two points may be considered for each year of college education in science or engineering. A maximum of 4 points may be accrued through education.

(2) Training. One point may be considered for each major amusement ride inspection/maintenance school attended or 1 point accrued for each 5 hours of continuing education credit (CEU) in a recognized and approved course of training in amusement ride safety and inspections. A maximum of 6 points may be accrued through training.

(3) Experience. Two points may be considered for each year of experience in amusement ride safety, maintenance or inspections. A maximum of six points may be accrued through experience. Credits for experience must be documented sufficiently for verification by TDI.

(b) In addition to the criteria submitted under paragraphs (1)-(3) of this section, additional criteria of instructor experience, extensive inspection or educa-

tion experience, letters of credit, or participation in formal trade association activities, may be submitted for review by TDI.

**§5.9006. Designation of Safety Inspector for Amusement Rides and Devices.** The designation as Safety Inspector for amusement rides and devices may be made by TDI and is based on the qualifications in §5.9005 of this subchapter (relating to Qualifications of Personnel Conducting Safety Inspections of Amusement Rides and Devices). To be designated as a Safety Inspector for amusement rides and devices, a candidate must obtain an application form titled "Qualification Review for Inspectors of Carnival-Amusement Rides and Devices." The application form must be completed and returned with appropriate documentation of education, training and experience to the Director for review of qualifications. The application form is adopted by the board by reference and is published by TDI. Copies of the application form may be obtained from the Director of Loss Control Regulation, Mail Code 105-9A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

**§5.9007. Quarterly Injury Reports.** A person who operates an amusement ride (the operator) shall maintain accurate records of each injury caused by the ride which injury results in death or requires medical treatment.

(1) The Texas Department of Insurance adopts and incorporates herein by reference TDI AR-800 (Quarterly Injury Report). This form is published by TDI and copies of the form may be obtained from the Loss Control Regulation Division, Mail Code 105-9A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The operator shall file an injury report on TDI Form AR-800 with TDI on a quarterly basis and shall include in the report a description of each injury caused by a ride that results in death or injury that requires medical treatment.

(2) For purposes of this section, the term "medical treatment" includes treatment (other than first aid) administered by a physician or by registered professional personnel under the standing orders of a physician.

(3) For purposes of this section, the term "medical treatment" does not include first-aid treatment (one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and any other minor injuries that do not ordinarily require medical care) even though treatment is provided by a physician or by registered professional personnel.

(4) The quarterly injury report is not required of the operator for any quarter in which no reportable injury occurs.

**§5.9008. Filing Affidavit.** In addition to the requirements of the Act, §5, the following requirements apply.

(1) In the event a contract for use of an amusement ride provides that the amusement ride will not be operated until after July 1 but prior to December 31 of any year, then timely filing of the insurance policy and inspection certificate shall be made with TDI prior to the operation of the amusement ride. In no event may an amusement ride be operated before the inspection certificate and policy are submitted to TDI as required by §5.9004 of this title (relating to Amusement Ride Operation Requirements).

(2) If the amusement ride is inspected more than once a year, a supplemental inspection certificate (TDI Form AR-100 Revised 6/93) must be submitted to TDI not later than 15 days after each subsequent inspection. An additional annual \$20 administration fee is not required for supplemental inspection certificates.

**§5.9009. Information Request.** TDI may request, from the sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public, information concerning whether or not insurance in the amount required by the Insurance Code, Article 21.60 or this subchapter is in effect on the amusement ride. The sponsor, lessor, landowner, or other person to whom the information request is made shall respond to TDI within 15 days after the request is made. The response must be by written verification. For the purpose of verification, the written response shall include a copy of the declarations page of the policy insuring the amusement ride owner or operator.

**§5.9010. Confirmation of Required Insurance and Inspection Certificate; Rule Construction.**

(a) After the required insurance policy and inspection certificate, including certified check or money order for the total amount of annual administration fee have been received by TDI and found to be in compliance with the Act and this subchapter, the original amusement ride inspection certificate (TDI Form AR-100 Revised 6/93) will be stamped "Texas Department of Insurance Amusement Ride Program", include the date of approval and be returned to the insured owner or operator as evidence of compliance with filing requirements. The returned inspection certificate must be kept on the premises at which the amusement ride is offered for public use

and made available to any person granted authority under the Act to investigate compliance with the Act. A TDI Form AR-101 will be returned with each inspection certificate. This weatherproof form shall be affixed to the appropriate ride or device in a place easily visible to all ride participants.

(b) If the required insurance policy, inspection certificate, and/or annual administration fee is found not to be in compliance with the Act, this subchapter, or other applicable law, notice will be provided to the insured owner or operator by TDI indicating the necessary action(s) for compliance. If a response to compliance is not received within 10 days and the amusement ride/device is continuing to be used by the public, the Attorney General's Office will be notified for appropriate action. If non-compliance is due to mechanical problems or failure to meet insurance standards, another TDI Form AR-100 Revised 6/93 shall be submitted to TDI for approval after the necessary corrective action(s) or repair(s) have been completed by the owner or operator. After the necessary actions have been completed by the owner/operator to the satisfaction of TDI, TDI Form AR-100 Revised 6/93 will be stamped and mailed to the insured owner or operator as described in subsection (a) of this section.

(c) Nothing in this subchapter may be construed to authorize the operation of an amusement ride until all applicable requirements of law are met.

#### *§5.9011. Operator/Operational Requirements.*

(a) The ride operator shall be a competent and trained operator of sufficient age and maturity.

(b) The ride operator shall operate no more than one amusement ride, device or attraction at any given time, even if automatic timing devices are used to control the time cycle of the ride.

(c) The ride operator shall be trained in the proper use and operation of the ride/device as provided for in ASTM F770-88 and ASTM F853-91.

(d) The ride operator shall ensure that all passenger safety devices are in place around ride participants before starting the ride/device.

(e) The ride operator shall be within arm's length of the operating controls when the ride or device is in motion.

(f) The ride operator shall not operate any ride or device while under the influence of alcohol, drugs, or medicines that will affect his/her performance.

(g) The operator shall ensure that no one is permitted on a ride while carrying any article i.e., food, beverages, packages,

lighted cigarettes, etc., which could endanger the rider, other patrons, or spectators.

(h) Adequate fencing or barriers must be provided for the protection of spectators and riders from the action of the ride or device and its associated power units. In the case of aerial rides or swings, these barriers must provide a safe distance from the outermost arc of such swing or aerial ride.

(i) Any amusement ride or device or its power unit shall be so located to prevent a fire hazard to adjacent buildings, exhibits, structures, other amusement rides or devices. In the case of rides or devices using gasoline engines, storage of gasoline must be in approved safety containers, and so located to prevent a safety hazard. Gasoline engines shall be so located to have adequate ventilation for exhaust and fumes ventilation.

(j) All electrical wires leading to and from a ride or device shall be protected and insulated to prevent shock hazard. All electrical equipment shall be properly grounded with ground fault circuit interrupters if warranted. All electrical junction boxes shall be properly identified as such and be locked or sealed against public access. All wiring shall conform to manufacturer's and electrical code practices.

(k) Any ride or device requiring patron restraint shall be equipped with lap bars, seat belts, roll bars, shoulder straps or other safety restraints as appropriate. Height and weight, age, or health restrictions, may be required on any ride or device by the inspector or the ride owner/operator.

(l) A suitable fire extinguisher, meeting the standards of state fire officials shall be present on or nearby every ride or device and must be properly charged and operable at all times.

#### *§5.9012. Denial of Entry to, Amusement Rides.*

(a) The owner/operator of an amusement ride or device shall have the ability to view patrons so that no one is permitted on such ride or device who appears to be in an intoxicated, drugged or other condition of health that could be detrimental to the safety of themselves, other patrons, the operator, or spectators.

(b) The owner/operator shall exercise reasonable control to prohibit the wearing of improper attire or lack of attire as deemed appropriate for the ride or device.

(c) The owner/operator will prohibit the carrying of any article which might be dropped or thrown from the ride or device.

(d) The restrictions set forth in this section and others that will preclude participation on an amusement ride or device shall be posted in plain view at the entrance to

the ride. No operator may waive such restrictions.

*§5.9013. Injunctions.* Any person who operates an amusement ride, amusement attraction, or amusement device, and offers such for the public, must meet the requirements of the Texas Amusement Ride Safety Inspection and Insurance Act. Failure to comply or violations of the Act constitute a Class C-Misdemeanor. Each day of public operation shall constitute a separate and distinct offense. The district attorney of each county in which an amusement ride or device is operated or, on request of the Commissioner of Insurance, the State Attorney General or one of his/her agents may seek an injunction against any person operating an amusement ride or device in violation of the Act and this subchapter.

*§5.9014. Penalties; Local Enforcement.* An amusement ride owner/operator commits an offense if he/she fails to comply with any requirement under §5.9004 of this title (relating to Amusement Ride Operation Requirements). A sponsor, lessor, landowner, or other person responsible for an amusement ride offered for use by the public commits an offense if he/she fails to provide information required by this subchapter or provides false information under §5.9004 (a)(2)(I). Any offense under this subchapter is considered a Class C misdemeanor. Each time a violation of this subchapter is committed constitutes a separate offense. In addition to action by the State Attorney General, local municipal or county law enforcement officials may be solicited to determine compliance with this subchapter in conjunction with TDI, and may institute an action in a court of competent jurisdiction to enforce the Insurance Code, Article 21.60 and this subchapter.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325971

Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: August 23, 1993

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

### Subchapter K. Commercial Multi-Peril Policies

#### • 28 TAC §5.9101

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2031, scheduled for

9:00 a.m. August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendment to §5.9101, concerning commercial multi-peril insurance and the filing of rates and policy forms for a commercial multi-peril policy. Pursuant to the amendments to the Insurance Code, Article 5.13-2, enacted under House Bill 1461 by the 73rd Texas Legislature, the amendments to §5.9101 are necessary to add commercial casualty insurance and medical professional liability insurance as eligible lines of insurance under a commercial multi-peril policy for the file and use of rates and the prior approval of policy forms. This will ensure that these lines in both the monoline and multi-peril coverages will be regulated in the same manner. The amendments also clarify the term "commercial casualty insurance." Pursuant to the amendments to Article 5.13-2, the supplementary rating information required to be submitted for each line of insurance is broadened to include premium discounts and rating plans such as experience, schedule and retrospective rating. A clarifying statement is added under subsection (f) to clearly indicate that policy forms and endorsements for use with a "large" risk as defined in the Insurance Code, Article 5.13-2, §8(f), are exempt from any filing requirements in subsection (f). In addition, because of the changes to the structure and operation of the Texas Department of Insurance enacted by HB 1461, references to the State Board of Insurance are deleted, and the Texas Department of Insurance is substituted.

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 availability of new lines of insurance that can be included in a commercial multi-peril policy, which will provide businesses with a wider range of insurance coverages that can be purchased under a single policy. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section.

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 Casually Program, Texas Department of Insurance, P.O. Box 149104, MC 103-1A, Austin, Texas 78714-9104.

The amendment is proposed pursuant to the Insurance Code, Articles 5.81, and 5.98, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 5.81 authorizes

the State Board of Insurance to approve forms for multi-peril policies of insurance and to adopt rules as in the best judgment of the Board are necessary and desirable to carry out the purposes and objectives of this 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. Article 1.04(b) authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state. 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.

The following articles of the Insurance Code are affected by this rule: the Insurance Code, Articles 5.13-2 and 5.81.

*§5.9101. Multi-Peril Policies.*

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

(1)-(4) (No change).

(5) Supplementary rating information—Any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer [required by the State Board of Insurance] to determine the applicable premium for an insured. For the multi-peril package policy with a divisible premium, the supplementary rating information must be submitted for each line of insurance included. The term includes factors and relatives, such as increased limit factors, classification relativities, deductible relativities, premium discount, and [or] other similar factors and rating plans such as experience, schedule and retrospective rating.

(6) Supporting information.

(A)-(C) (No change).

(D) any other information required by the Texas Department [State Board] of Insurance to be filed.

(b) Commercial multi-peril package policy. Insurers which write lines of insurance covered by the Texas Insurance Code, Chapter 5, may include coverage for any two or more of the following lines of insurance in a commercial multi-peril package policy with rates filed and forms approved pursuant to the provisions of this section:

- (1) general liability;
- (2) commercial property;

(3) commercial casualty, which includes the coverages specified in subparagraphs (A)-(E) of this paragraph, but excludes commercial automobile insurance; fidelity, surety and guaranty bonds; and workers compensation.

(A) boiler and machinery;

(B) commercial crime;

(C) commercial glass;

(D) miscellaneous professional liability, including any professional liability insurance regulated pursuant to the Insurance Code, Articles 5.13 and 5.15, prior to September 1, 1993; and excluding professional liability coverage for accountants, architects, beauticians/barbers, engineers, for-profit nursing homes, lawyers, medical laboratory personnel, psychologists, real estate agents, surveyors, and x-ray laboratory personnel; or

(E) any other commercial casualty [boiler and machinery];

(4) medical professional liability [commercial crime];

(5) [commercial glass;

[(6) inland marine; and

[(7)] garage insurance including all coverages and endorsements included in the Texas Garage Policy, except for those coverages specifically rated on the basis of the risk characteristics of the automobile or the person driving.

(c) (No change.)

(d) Rate filings.

(1) For each line of insurance included in a commercial multi-peril package policy with a divisible premium, each insurer shall file with the Texas Department [State Board] of Insurance all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in the state. For each commercial multi-peril package policy with an indivisible premium based on the loss experience under such package policy as a whole, each insurer shall file with the Texas Department [State Board] of Insurance all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state.

(2) If the Texas Department [State Board] of Insurance determines after a hearing that an insurer's rates require supervision because of the insurer's financial condition or the insurer's rating prac-



tices, the Department [State Board of Insurance] may require the insurer to file with the Department [State Board of Insurance] all rates, supplementary rate information, and any supporting information prescribed by the Department [State Board of Insurance].

(3) An insured that is aggrieved with respect to any filing in effect, or the public insurance counsel, may make a written application to the Texas Department [State Board] of Insurance for a hearing on the filing. The application must specify the grounds on which the applicant bases the grievance. If the Texas Department [State Board] of Insurance finds that the application is made in good faith, that the applicant would be so aggrieved if the grounds in the application are established and that those grounds otherwise justify holding a hearing, the Department [State Board of Insurance] shall hold a hearing not later than the 30th day after the date of receipt of the application. The Department [State Board of Insurance] shall give at least 10 days' written notice to the applicant and to each insurer that made the filing in question.

(4) If, after the hearing, the Texas Department [State Board] of Insurance finds that the filing does not meet the requirements of this section, the Department [State Board of Insurance] shall issue an order specifying how the filing fails to meet the requirements of this section and stating the date on which, within a reasonable period after the order date, the filing is no longer in effect. The Department [State Board of Insurance] shall send copies of the order to the applicant and to each affected insurer.

(5) Each insurer subject to this section shall file with the Texas Department [State Board] of Insurance, on a quarterly basis, information relating the changes in losses, premiums, and market share since January 1, 1993.

(6) (No change).

(c) Disapproval.

(1) The Texas Department [State Board] of Insurance shall disapprove a rate if the Department [State Board of Insurance] determines that the rate filing made under this section does not meet the standard established under this section.

(2) If the Texas Department [State Board] of Insurance disapproves a filing, the Department [board] shall issue an order specifying in what respects the filing fails to meet the requirements of this section. Upon written request made to the Department [State Board of Insurance], the filer is entitled to a hearing not later than the 30th day after the effective date of the disapproval order.

(3) If the Texas Department [State Board] of Insurance disapproves a rate that is in effect, the Department [board] may issue a disapproval order only after a hearing held after at least 20 days' written notice to the insurer that made the filing. The disapproval order shall be issued not later than the 15th day after the close of the hearing and shall specify how the rate fails to meet the requirements of this section. The disapproval order shall state the date on which the further use of that rate is prohibited. The Department [board] shall set the date not earlier than the 45th day after the date on which the hearing closes.

(f) Forms.

(1) A commercial multi-peril package policy or printed endorsement for use in connection with a commercial multi-peril package policy described in subsection (b) of this section may not be delivered or issued for delivery in this state unless the form has been filed with and approved by the Texas Department [State Board] of Insurance. Commercial multi-peril package policy forms and endorsements for use with "large risks" as defined in the Insurance Code, Article 5.13-2, §8(f), shall be exempt from the filing requirements in this subsection.

(2) Each filing shall be made not later than the 60th day before the date of any use or delivery for use. At the expiration of the 60-day period a filed form is approved unless, before the expiration of the 60 days, the Texas Department [State Board] of Insurance approves or disapproves the form by order. Approval of a form by the Department [State Board of Insurance] constitutes a waiver of any unexpired portion of the 60-day period. The Department [State Board of Insurance] may extend by not more than an additional 10 [60] days the period during which the Department [it] may approve or disapprove a form by giving notice to the filer of the extension before the expiration of the initial period. At the expiration of any extension and in the absence of any earlier approval or disapproval, the form shall be considered approved. For good cause shown, the Department [State Board of Insurance] may withdraw [its] approval at any time after notice and a hearing.

(3) An order of the Texas Department [State Board] of Insurance disapproving any form or any notice of the Department's [State Board of Insurance's] intention to withdraw a previous approval shall state the grounds for the disapproval in enough detail to reasonably inform the filer of the grounds. An order of withdrawal of a previously approved form takes effect on the expiration of the prescribed period, but not sooner than the 30th day after the effective date of the withdrawal order, as prescribed by the Texas Department [State Board] of Insurance.

(4) An insurer may not use in this state any form after disapproval of the form or withdrawal of approval by the Texas Department [State Board] of Insurance.

(5) If the Texas Department [State Board] of Insurance promulgates standard commercial multi-peril insurance forms, endorsements, and other related forms, an insurer, at its discretion, may use these forms instead of the insurer's own forms for writing commercial multi-peril insurance. Forms submitted by insurers for approval under this subsection must provide coverage equivalent to that provided in the policy and endorsement forms used for these lines of coverages on the effective date of this section. An endorsement may not reduce coverage provided under the approved policy form.

(g) Additional lines of insurance.

(1) In addition to the lines of insurance enumerated in subsection (b)(a) of this section, commercial automobile, other than garage insurance as described in subsection (b)(6) of this section [one or more of the following lines of insurance] may also be included in a multi-peril package policy. [:

[(A) professional liability;

[(B) commercial automobile, other than garage insurance as described in subsection (b)(7) of this section.]

(2) The rates and policy forms for commercial automobile insurance, other than garage insurance as described in subsection (b)(6) of this section, [the lines of insurance enumerated in paragraph (1) of this subsection] shall be those rates and forms approved in the manner provided by the Texas Insurance Code, [Article 5.15 for professional liability and] Articles 5.101 and 5.06 [for commercial automobile]. Policy forms and endorsements for this [those] line[s] of insurance shall be self-contained and severed from all other coverages under the multi-peril policy.

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

Issued in Austin, Texas, on July 16, 1993.

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Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

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

## Subchapter M. Filing Requirements [Requirement]

### • 28 TAC §5.9301

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2029, scheduled for 9:00 a.m. August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new 28 TAC §5.9301, concerning the policy form and endorsement filing requirements for insurers sharing insurance coverage on a single commercial risk or account on a pro rata basis. It is not uncommon in today's market to have commercial risks or accounts that require limits of liability that a single insurer cannot provide or a risk or account which may have hazards that a single company is not willing to accept based on the total limit of liability. In such instances, the commercial risk or account may be shared by two or more insurers on a pro rata basis. Commercial property insurers and general liability insurers, pursuant to the Insurance Code, Article 5.13-2, §8, and commercial multi-peril insurers, pursuant to the Insurance Code, Article 5.81, and §5.9101 of this title (relating to Multi-peril Policies) are required to file, on an individual insurer basis, policy forms and endorsements for approval by the board. This individual insurer filing procedure is required regardless of whether several insurers are insuring the same risk or account on a shared basis. The proposed rule is necessary to except those insurers that are providing shared commercial insurance coverages on a single commercial risk or account from the requirement that each individual insurer file policy forms and endorsements. Without this rule, each insurer participating on a single commercial risk or account would be required to use its own individual policy forms that have been approved by the board, and there could be non-concurrence of coverage for the same commercial risk or account. The rule provides for one of the participating insurers on a shared commercial risk or account to be designated as the lead insurer, and the policy forms and endorsements approved by the board for that lead insurer are to be used by other insurers being required to file, for approval, the policy forms and endorsements of the lead insurer. The lead insurer is defined as the insurer providing the largest percentage of coverage for a single commercial risk or account or the insurer designated by the insured as the lead insurer. The Subchapter M heading is also being amended to reflect the fact that the subchapter addresses more than one filing requirement.

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

Mr. Anderson, also has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule as proposed

will be the assurance that those commercial risks or accounts that are shared by two or more insurers on a pro rata basis will always be provided concurrent coverage based on the policy forms and endorsements filed and approved for the lead insurer. In addition, commercial risks with high limits of liability or with exceptional hazardous exposures will be able to obtain this coverage from several different licensed insurers on a shared basis rather than having to obtain coverage in the non-admitted market. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the rule.

Comments on the proposal must be submitted in writing, within 30 days after publication of the proposed section in the *Texas Register*, to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be mailed to Lyndon Anderson, Associate Commissioner, Property and Casualty Program, P.O. Box 149104, MC #103-1A, Austin, Texas 78714-9104.

The new section is proposed pursuant to the Insurance Code, Articles 5.13-2, 5.81, 5.98, and 1.04(b), and Texas Civil Statutes, Article 6252-13a. Article 5.13-2, §8, requires individual insurers to file commercial property and general liability policy forms and endorsements with the board for approval before such policy forms and endorsements can be delivered or issued for delivery in this state. Article 5.81 authorizes the board to approve multi-peril insurance policy forms and endorsements. Article 5.98 authorizes the State Board of Insurance to adopt reasonable rules to accomplish the purposes of Chapter 5 of the Insurance Code (Rating and Policy Forms). Article 1.04(b) authorizes the State Board of Insurance to determine policy, rules, and forms in accordance with the laws of this state. 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 to prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this rule: Insurance Code, Articles 5.13-2 and 5.81.

### §5.9301. Commercial Risks Shared by Two or More Insurers.

(a) This section applies in the event that the total limit of liability for a single commercial risk or account must be shared by two or more insurers as a result of either a single insurer not having the capacity to provide the total limit of liability for the single risk or account to be shared or as a result of a single insurer being unwilling to accept the total limit of liability for the single risk or account to be shared because it produces a more hazardous exposure.

(b) For purposes of this section, "lead insurer" shall mean the insurer providing coverage for the largest percentage of liability for a single commercial risk or

account or the insurer designated by the insured as the lead insurer.

(c) The policy forms and endorsements issued to provide coverage on a single commercial risk or account which is shared by two or more insurers must be filed and approved for the lead insurer. Other insurers sharing such coverage on a single commercial risk or account with the lead insurer must use the filed and approved policy forms and endorsements of the lead insurer. These approved policy forms and endorsements may be used by such other insurers sharing such coverage without making a separate filing to the State Board of Insurance for approval.

(d) A notice indicating the name of the lead insurer must be placed on each policy of insurance issued to provide coverage on a single commercial risk or account which is shared by two or more insurers. The notice must contain the following or similar language: The insurance provided for this (risk or account) is shared by two or more companies. The lead insurer is \_\_\_\_\_.

(e) The policy forms and endorsements filed for approval and used for insuring a single commercial risk or account shared by two or more insurers must meet the applicable equivalent coverage requirements set forth in §5.9302 of this title (relating to Equivalent Coverage).

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

Issued in Austin, Texas, on July 16, 1993.

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

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

## Subchapter M. Filing Requirements

### • 28 TAC §5.9302

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2030, scheduled for 9:00 a.m. August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider an amendment to §5.3902, concerning the requirements for equivalent coverage, as provided for in the Insurance Code, Article 5.13-2, §8(e), for policy forms filed by individual insurers for commercial property insurance, general liability insurance, commercial casualty insurance, and medical professional liability insurance, and as provided in §5.9101(f)(5) of this title (relating to Multi-

Peril Policies), for policy forms filed by individual insurers for commercial multi-peril insurance. The amendments are necessary because of the changes to Article 5.13-2 enacted by the 73rd Texas Legislature in House Bill 1461. The amendment to §5.9302(a) is necessary to include commercial casualty insurance and medical professional liability insurance as being subject to the equivalent coverage requirements. A new subsection (b) is added to clarify the meaning of the term "commercial casualty" insurance, and subsequent subsections are redesignated accordingly. Current subsection (d) is redesignated as subsection (e) and is amended to indicate that policy forms are to be filed with the Texas Department of Insurance instead of the State Board of Insurance, in accordance with changes in the structure and operation of the Texas Department of Insurance enacted by House Bill 1461. The amendment to current subsection (g), which is redesignated as subsection (h), is needed to exempt policy forms used with large risks from the requirement to be filed with the Texas Department of Insurance for approval and to clarify that policy forms for use with large risks must, however, continue to include all provisions and conditions required by the Insurance Code, including any specific notices to policyholders. Current subsection (h), which has been redesignated as subsection (i), is amended to conform the requirement of the amount of a total premium for eligibility as a large risk to amendments to Article 5.13-2. The new requirements include total premium amounts of \$50,000 for property insurance in lieu of \$25,000 and \$100,000 for commercial multi-peril in lieu of \$75,000. Technical editing changes include the addition of subsection headings and corrections to subsection references.

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

Mr. Anderson has also determined that for each year for the first five years the proposed rule is in effect the public benefit anticipated as a result of enforcing the rule is the availability of new and innovative commercial insurance products to better suit the particular needs of the policyholder; the promotion of competition and availability of certain commercial casualty coverages and medical professional liability coverage; and for large risks, the elimination of any delay in the issuance of commercial insurance products resulting from current prior approval policy requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal 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 Program, Texas Department of Insurance, P.O. Box 149104, MC 103-1A, Austin, Texas 78714-9104.

The amendment is proposed pursuant to the Insurance Code, Articles 5.98, 5.13-2, 5.81, and 1.04; and Texas Civil Statutes, Article 6252-13a, §4 and §5. 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. Article 5.13-2, §8(e) requires that policy forms submitted by insurers for approval in general liability lines, property lines, commercial casualty lines and medical professional liability lines must provide coverage equivalent to that provided in the policy forms used for those lines prior to and in effect on October 1, 1991. Article 5.81 authorizes the State Board of Insurance to approve forms for multi-peril policies of insurance and to adopt rules as in the best judgment of the board are necessary and desirable to carry out the purposes and objectives of this article. Article 1.04(b) authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state. 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.

The following articles of the Insurance Code are affected by this rule: the Insurance Code, Articles 5.13-2 and 5.81.

**§5.9302. Equivalent Coverage Requirements.**

(a) Purpose and Scope. The term "equivalent coverage" as provided in the Insurance Code, Article 5.13-2, §8(e), for policy forms filed by individual insurers for commercial property insurance, [and] general liability insurance, commercial casualty insurance, and medical professional liability insurance and as provided in 28 TAC §5.9101 (f) [(g)] (5) of this title (relating to Multi-Peril Policies) for commercial multi-peril policy forms for commercial property, general liability, commercial casualty, medical professional liability [boiler and machinery, commercial crime, commercial glass], commercial inland marine, and garage liability insurance shall be subject to the standards set forth in [subsections (b)-(h) of] this section.

(b) Commercial Casualty Insurance.

(1) The term commercial casualty insurance as used in this section includes the following insurance coverages:

- (A) boiler and machinery;
- (B) commercial crime;

(C) commercial glass;

(D) miscellaneous professional liability insurance, including any professional liability insurance regulated pursuant to the Insurance Code, Articles 5.13 and 5.15, prior to September 1, 1993; and excluding professional liability coverage for accountants, architects, beauticians/barbers, lawyers, medical laboratory personnel, psychologists, real estate agents, surveyors, and x-ray laboratory personnel; or

(E) any other commercial casualty insurance.

(2) The term commercial casualty insurance as used in this section does not include any of the following insurance coverages:

(A) commercial automobile;

(B) fidelity, surety, and guaranty bonds; or

(C) workers' compensation insurance.

(c)[(b)] Definition of Policy Forms. The term "policy form(s)" in these rules shall include printed endorsements and other related forms as set forth in the Insurance Code, Article 5.13-2.

(d)[(c)] What Constitutes Equivalent Coverage. Whether coverage is deemed to be equivalent by the Texas Department of Insurance shall be based on comparisons of like or similar policy forms that were approved by the State Board of Insurance prior to and in effect on October 1, 1991, to those policy forms filed by individual companies under this rule. For example, named peril policy will be compared to named peril policy, all risk policy will be compared to all risk policy, commercial liability policy will be compared to commercial liability policy.

(e)[(d)] Filing of Good Faith Belief Statement. All filings of policy forms submitted to the Texas Department [State Board] of Insurance must contain a statement signed by an officer of the company attesting in good faith belief that the filed policy forms provide equivalent coverage as defined in subsection (f) [(e)] of this section, to those policy forms approved by the State Board of Insurance prior to and in effect on October 1, 1991.

(f)[(e)] Filing of Equivalent Coverage Forms. Equivalent coverage shall mean the following:

(1) Policy forms filed for approval must, taken as a whole, provide coverage that is at least equal in value to coverage provided under policy forms approved by the State Board of Insurance prior to and in effect on October 1, 1991. The insurer submitting such policy forms for approval shall submit:

(A) A comparative evaluation of the filed policy forms to like or [to] similar policy forms that were approved by the State Board of Insurance prior to and in effect on October 1, 1991; and

(B) an express disclosure form to be signed by the policyholder and attached to the initial policy if a designated limit applying to a specific type of property or to a specific coverage within the filed policy form is less than the limit for the same or similar coverage in the comparable policy form approved by the State Board of Insurance prior to and in effect on October 1, 1991.

(2) Policy forms filed for approval must include all provisions and conditions required by the Texas Insurance Code, including any specific notices to a policyholder.

(3) Except as provided in subsections (g) [(f)] and (h) [(g)] of this section, policy forms filed for approval must contain substantially the same coverage provided under policy forms approved by the State Board of Insurance prior to and in effect on October 1, 1991, for:

- (A) debris removal;
- (B) pollution (all lines of insurance);
- (C) defense costs;
- (D) punitive damages;
- (E) liquor liability;
- (F) collapse of building peril;

(G) any other coverage the Texas Department [State Board] of Insurance, by rule, may determine to be necessary as a matter of public policy.

(g) [(f)] Exclusions and Limitations. Policy forms filed for approval may contain exclusions and/or limitations which have previously been approved by the State Board of Insurance for use on an individual basis, and must be accompanied by:

(1) an explanatory memorandum setting forth the proposed application of and the reasons for the exclusion and/or limitation;

(2) a disclosure and election form to be signed by the policyholder and attached to a policy indicating the policyholder and the insurer have negotiated and agreed to the coverage to be provided in the policy.

(h) [(g)] Policy Forms for Large Risks. Policy forms [filed for approval and designated as policy forms] for use with "large risks" are exempt from the requirement to be filed with the Texas Department of Insurance for approval and shall not be subject to the requirements for equivalent coverage set out in this rule except policy forms for use with large risks must include all provisions and conditions required by the Insurance Code, including any specific notices to policyholders [subsections (e)(2) and (h) of this section]. Such filed policy forms shall be considered to provide equivalent coverage if the coverage is negotiated between the insurer and policyholder. The filing of policy forms for "large risks" must be accompanied by:

(1) an explanatory memorandum;

(2) a disclosure and election form to be signed by the policyholder and attached to a policy indicating the policyholder and the insurer have negotiated and agreed to the coverage to be provided in the policy].

(i) [(h)] Meaning of Large Risk. The term "large risk" means any of the following:

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

(2) an insured that has total annual gross revenues of \$20 million or more; or

(3) an insured that has a total premium of \$50,000 [\$25,000] or more for property insurance, or \$50,000 or more for general liability insurance, or \$100,000 [\$75,000] or more for multi-peril insurance.

(j) [(i)] Negotiation of Coverage. The negotiation of the coverage to be provided a policyholder, including the consenting of a policyholder to exclusions of coverage shall be fair and reasonable and subject to the applicable provisions of the Texas Insurance Code.

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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Linda K. von Quintus-Dorn  
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For further information, please call: (512) 463-6327

## Chapter 9. Title Insurance

### Subchapter A. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas

#### • 28 TAC §9.1

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2035, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendment to §9.1, concerning the adoption by reference of the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual). The amendment consists of the repeal of procedural rule P-28, concerning general requirements for continuing education of title insurance agents licensed under the Insurance Code, Article 9.36, and escrow officers licensed under Insurance Code Article 9.43. Procedural Rule P-28 also establishes requirements for the implementation of continuing education programs as authorized in the Insurance Code, Article 9.58. The repeal of procedural rule P-28 is necessary for the State Board of Insurance to facilitate the Legislative intent of House Bill 1461. House Bill 1461 was passed by the 73rd Legislature, Regular Session, with an effective date of September 1, 1993, and provides that administration of continuing education programs for agents by the Department is discretionary. House Bill 1461 also makes participation in continuing education programs by agents voluntary, unless continuing education is otherwise required by statute or applicable law. The amendment of §9.1 will enable the Department to recognize or administer continuing education programs in accordance with provisions of House Bill 1461, which added Article 21.01-2 to the Insurance Code. Procedural rule P-28, paragraph 1 of the Basic Manual, adopted by reference under §9.1 of the rules promulgated by the State Board of Insurance, discusses the purpose and scope of the continuing education requirements and program for title agents. Procedural rule P-28, paragraph 2, discusses the definition of terms used throughout the rule. Procedural rule P-28, paragraphs 3 and 4, discusses the continuing education requirements for each title agent and escrow officer during the license period, and exemptions and extensions of time to complete the continuing education requirements. Procedural rule P-28, paragraph 5, discusses the continuing education requirements for a title agent or escrow officer whose license period is less than the period required in the Insurance Code. Procedural rule P-28, paragraph 6, discusses continuing education course content. Procedural rule P-28, paragraphs 7

and 8, addresses maintenance of continuing education records and the Department's ability to review the books and records of continuing education course-providers and title agents. Procedural rule P-28, paragraphs 9 and 10, addresses distribution of the rule to interested parties and the types of forms that correspond to the different filings and registration documents mentioned in the rule. The amendment, with an effective date of September 1, 1993, will not alter, modify, or eliminate the responsibility of the Department to administer continuing education programs for title agents and escrow officers through August 31, 1993. By separate rulemaking, the Department will establish minimum standards or criteria for the continuing education courses offered by course providers.

Beverly McVey, director, licensing group, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal impact to state and local government as a result of enforcing or administering the amendment. There will be no effect on local employment or the local economy.

Ms. McVey also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the amendment will be a streamlined, less cumbersome, and less bureaucratic system of approving continuing education courses; the creation of a competitive market system for continuing education course providers; and a competitive market system for continuing education programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal to be considered by the State Board of Insurance must be submitted within 30 days after publication of the proposed amendment in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, State Board of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Beverly McVey, Director, Licensing Group, Mail Code 107-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 9.58, 21.01-2, and 1.04, and Texas Civil Statutes, Article 6252-13a, §4, and §5. Article 9.58 authorizes the State Board of Insurance to adopt a procedure to verify that title agents and escrow agents are participating in continuing education programs. Article 21.01-2, §4 provides that the Department may recognize or administer continuing education programs for agents affected by the Article. Article 1.04(b) provides the State Board of Insurance with authority 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 requirements of available procedures and prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this rule: the Insurance Code,

Articles 9.58, and 21.01-2, for the Writing of Title Insurance in the State of Texas.

*§9.1. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.* The State Board of Insurance adopts by reference the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* as amendment effective October 30, 1992. The document is published by and is available from Hart Forms and Services, 11500 Metric Boulevard, Austin, Texas 78758, and is available from and on file at the Texas Department of Insurance Section, MC 104-1C, 333 Guadalupe Street, Austin, Texas 78701-1998.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325979

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

Earliest possible date of adoption: August 23, 1993

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

## Chapter 19. Agent's Licensing

### Subchapter K. Continuing Education Requirements

#### • 28 TAC §§19.1001-19.1011

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

The State Board of Insurance of the Texas Department of Insurance proposes at a public hearing under Docket Number 2034, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider the repeal of §§19.1001-19.1011, concerning the continuing education requirements for agents. The repeal of these sections is necessary for the State Board of Insurance to facilitate the Legislative intent of House Bill 1461. House Bill 1461 was passed by the 73rd Legislature, Regular Session, with an effective date of September 1, 1993, and provides that administration of continuing education programs for agents by the Department is discretionary. House Bill 1461 also makes participation in continuing education programs by agents voluntary, unless continuing education is otherwise required by statute or applicable law. The repeal of §§19.1001-19.1011 will enable the Department to recognize or administer continuing education programs in accordance with provisions of House Bill 1461, which added Article 21.01-2 to the Insurance Code. Section

19.1001 discusses the purpose and scope of the continuing education requirements and program. Section 19.1002 discusses the definitions of terms used throughout the subchapter. Sections 19.1003-19.1005 discuss the continuing education requirements for each agent during a two-year period, exemptions, and penalties for failure to comply with continuing education requirements. Section 19.1006 discusses continuing education course content. Sections 19.1007-19.1008 address maintenance of continuing education records and the Department's ability to review the books and records of continuing education course providers and agents. Section 19.1009 addresses the establishment of an Advisory Council to assist in the administration of continuing education programs. Section 19.1010 and §19.1011 address the distribution of these rules to interested parties and the types of forms that correspond to the different filings and registration documents mentioned in the rules. The repeal, with an effective date of September 1, 1993, will not alter, modify, or eliminate the responsibility of the Department to administer continuing education programs for agents and adjusters through August 31, 1993. By separate rulemaking, the Department will establish minimum standards or criteria for the continuing education courses offered by course providers.

Beverly McVey, director, licensing group, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal impact to state and local government as a result of enforcing or administering the repeal. There will be no effect on local employment or the local economy.

Ms. McVey also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be a streamlined, less cumbersome, and less bureaucratic system of approving continuing education courses; the creation of a competitive market for continuing education courses providers; and a competitive market system for continuing education 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 to be considered by the State Board of Insurance must be submitted within 30 days after publication of the proposed repeal in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, State Board of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Beverly McVey, Director, Licensing Group, Mail Code 107-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The repeals are proposed under the Insurance Code, Articles 21.07-1, 21.14, 21.01-2 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Articles 21.07-1 and 21.14 authorize the State Board of Insurance to adopt a procedure for certifying continuing education programs for agents. Article 21.01-2, §4, provides that the Department may recognize or administer continuing

education programs for agents affected by the Article. Article 1.04(b) provides the State Board of Insurance with authority 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 requirements of available procedures and prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this rule: the Insurance Code, Articles 21.01-2, 21.07-1, and 21.14.

§19.1001. Purpose and Scope.

§19.1002. Definitions.

§19.1003. Applicability of Requirement.

§19.1004. Continuing Education Requirement.

§19.1005. Failure to Comply.

§19.1006. Approved Courses of Study.

§19.1007. Licensee's Responsibility for Record Keeping.

§19.1008. Records and Audit.

§19.1009. Texas Continuing Education Advisory Council.

§19.1010. Distribution of Rules and Attachments.

§19.1011. Forms Adopted by Reference.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325980

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

Earliest possible date of adoption: August 23, 1993

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



## Chapter 31. Liquidation

### Subchapter B. Audit Coverages Required for the Receiver and Special Deputy Receivers

#### • 28 TAC §§31.101-31.107

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2027, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new §§31.101-31.107 concerning the requirements for, and audit coverages applicable to, the receiver and any special deputy receiver appointed under the Insurance Code, Article 21.28. Article 21.28, §12(d) and (f) provide for annual audits of the liquidator. Proposed new §31.101 and §31.102 state the purpose and applicability of the rule. Proposed new §31.103 prescribes the nature of the audits to be performed. Proposed new §31.104 provides for the scope and frequency of the audits. Proposed new §31.105 contains the audit reporting requirements. Proposed new §31.106 determines the manner of assessing audit costs. Proposed new §31.107 is a severability clause. These proposed rules were developed by the Texas Department of Insurance with review and comment by the Office of the State Auditor as required by Article 21.28, §12(f).

Sandra Autry, associate commissioner for the financial program, has determined that, for the first five-year period the proposed sections will be in effect, there could be moderate fiscal implications for state or local government as a result of enforcing or administering the sections; however, any fiscal impact will be nominal in relation to the benefits to the receivership estates and taxpayers because of cost savings generated by the audits. There will be no effect on local employment or local economy. Required audits will be performed by existing staff of the State Auditor's Office.

Ms. Autry also has determined that, for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the section will be more effective audits of the receiver and special deputy receivers. The costs of audits required by the provisions of these proposed provisions are to be assessed against the audited entity (either the receiver or special deputy) and will be considered administrative costs. However, any costs related to the audits will be nominal in relationship to the benefits to liquidation estates and taxpayers because of cost savings generated by the audits.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra Autry,

Associate Commissioner for the Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new sections are proposed under the Insurance Code, Articles 21.28 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 21.28, §12(d), requires the State Auditor to conduct an annual audit of the liquidator as defined in Article 21.28, §1(d). Article 21.28, §12(e), outlines the contents of the auditor's reports. Article 21.28, §12(f), provides the manner of filing the audit reports. Article 21.28, §12(i), authorizes the Board to determine rules related to scope, frequency, reporting requirements, and costs of audits. Article 1.04(b) 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 requirements of available procedures, and prescribe the procedures for adoption of rules of a state administrative agency.

The following are the articles of the Insurance Code that are affected by these rules: §§ 31.101-31.107: The Insurance Code, Article 21.28, §12.

§31.101. Purpose. The purpose of these sections is to prescribe the requirements for, and audit coverages applicable to, the receiver and any special deputy receiver appointed under the Insurance Code, Article 21.28.

§31.102. Applicability. The provisions of this subchapter apply to the receiver and any special deputy receiver appointed pursuant to the provisions of the Insurance Code, Article 21.28. Provided, however, that the provisions of this subchapter do not prohibit, preclude or limit the Board from ordering, conducting or performing an examination of any liquidator, as that term is defined in the Insurance Code, Article 21.28, §1(d).

§31.103. Nature of Audits. Audits applicable to entities subject to the provisions of these sections shall take the form of performance or operational audits, and shall include, but not be limited to, the types of audits which are described in paragraphs (1)-(3) of this section.

(1) Compliance audit. The compliance audit shall be undertaken to determine whether the following objectives are being met:

(A) the audited entity has obligated, expended, received and used funds in accordance with the purpose for which those funds have been appropriated or otherwise authorized by law;

(B) the audited entity has obligated, expended, received and used funds in accordance with any limitations, restrictions, conditions or mandatory directions imposed by law on those obligations, expenditures, receipts, or uses;

(C) the audited entity has maintained its books, records and accounts in a manner which accurately reflects its financial and fiscal operations relating to the obligation, receipt, expenditure and use of funds including, but not limited to, state funds or funds represented as being collected for a state purpose;

(D) the audited entity has collected all revenues and receipts in accordance with the applicable laws and regulations of this State; and

(E) the audited entity has properly and legally handled or administered any money, negotiable securities, or similar assets received on behalf of the state, or received from the state and held in trust by the audited entity.

(2) Economy and efficiency audit. The economy and efficiency audit shall be undertaken to determine whether the objectives set out in subparagraphs (A) and (B) of this paragraph are being met and shall make the identifications set out in subparagraph (C) of this paragraph, as follows:

(A) the audited entity is managing or utilizing its resources, including funds, personnel, property, equipment, and space in an economical and efficient manner;

(B) the audited entity has presented financial, program, and statistical reports in a fair manner, and such reports contain useful data; and

(C) the causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative procedures, organizational structure, use of resources, allocation of personnel, purchasing, policies and equipment have been identified.

(3) Effectiveness audit. The effectiveness audit shall be undertaken to determine whether the following objectives are being met:

(A) the audited entity is attaining program objectives established pursuant to statutes and regulations, or by program criteria or program evaluation stan-

dards applicable to it, in an efficient and effective manner;

(B) the audited entity is contributing to achievement of those benefits intended by program design in an efficient and effective manner;

(C) the audited entity is discharging its duties and responsibilities under statutes and regulations or according to program performance criteria or program evaluation standards applicable to it in an efficient and effective manner; and

(D) the audited entity is performing its duties and responsibilities in connection with a program which does not duplicate, overlap or conflict with the duties, functions and responsibilities of another entity with respect to the same program, or with another program designed and intended to be applied to the same persons served by the audited entity.

#### §31.104. Scope and Frequency of Audits.

(a) Receiver. The receiver shall be subject to an annual audit in accordance with the provisions of the Insurance Code, Article 21.28, §12(d) and (e).

(b) Special deputy receivers. Each special deputy receiver appointed pursuant to provisions of the Insurance Code, Article 21.28, §12, shall be subject to audit requirements as provided in §31.103 of this title (relating to Nature of Audits), and in accordance with the frequency requirements set forth in paragraphs (1)-(4) of this subsection.

(1) The scope and frequency of audits of special deputy receivers, with respect to any particular receivership, shall be determined in accordance with a risk ranking based on relevant factors as addressed in paragraph (2) of this subsection and as a part of the Department's annual audit plan as addressed in paragraph (3) of this subsection.

(2) The ranking of particular risks for purposes of determining audit coverage for particular receiverships should be based on established risk assessment techniques and include, but not be limited to, the following indicators:

(A) the size of the receivership estate;

(B) the complexity of administration of the receivership estate, including controls necessary for effective administration;

(C) the size and nature of the asset base of the receivership estate;

(D) the volume, size, and nature of both the expenditures and the receipts associated with the receivership estate; and

(E) the reliability of financial reporting statements associated with the receivership estate.

(3) No later than December 31 of each year following the effective date of these sections, the Texas Department of Insurance shall complete its annual audit plan to specify audit coverage for special deputy receivers utilizing risk assessment indicators as provided in paragraph (2) of this subsection.

(4) The annual audit plan developed by the Department shall be subject to review by the Office of the State Auditor prior to its implementation.

(c) Board or Commissioner may order audit. Provided, however, that the Board or Commissioner may order any entity subject to the provisions of these sections to submit to a special audit upon a determination that facts and circumstances warrant such audit.

#### §31.105. Audit Reporting Requirements.

(a) Report required. The State Auditor or other organization or entity conducting any audit authorized or required pursuant to these sections shall prepare a written report for each audit conducted by such auditing entity.

(b) Contents of report. The written report must include a management letter with comments about the following items, as applicable:

(1) the criteria selected to measure effectiveness and efficiency;

(2) internal controls;

(3) compliance with state or federal laws;

(4) conditions found by auditors and the effects of such conditions; and

(5) any recommendations for improving operations or program effectiveness.

(c) Financial statement opinion requirement. The written report also must include an opinion on fair presentation of financial statements if the auditing entity considers such an opinion to be a necessary element of the report.

(d) Supplemental items to be reported. The auditing entity's report should also include, to the extent necessary, each of the following items:

(1) an analysis of the overall performance of the entity being audited;

(2) an analysis of the audited entity's financial operations and condition;

(3) an analysis of receipts and expenditures made by each audited entity in connection with receiverships covered by the audit, and an analysis of the adequacy of any required bond under the Insurance Code, Article 21.28, §12(a) in relation to assets, receipts and expenditures of the audited entity;

(4) in the instance of an audit of the receiver or any special deputy receiver, the amount of funds made available to such receiver or special deputy receiver by a guaranty association in connection with each receivership covered by the audit, and a detail of the purpose and manner of expenditure of such funds;

(5) the ratio of the total amount of claims paid to the total costs incurred in connection with each receivership covered by the audit; and/or

(6) the ratio of the administrative expenses of the receiver or special deputy receiver to the total costs incurred in connection with each receivership covered by the audit.

(e) Filing requirements for audit of receiver. For audits conducted in accordance with the provisions of the Insurance Code, Article 21.28, §12(d) and (e) copies of the auditor's report shall be filed in the manner required by the Government Code, §321.014(c), no later than March 31 of the year following the year covered by the audit.

(f) Filing requirements for audit of special deputy receiver. For audits other than those addressed in subsection (e) of this section, copies of the auditing entity's report shall be filed no later than March 31 of the year following the year or portion of the year covered by the audit to the following recipients:

(1) the Chair of the State Board of Insurance;

(2) the Commissioner of Insurance; and

(3) the members of the legislature on a committee with oversight responsibility for the entity or program that is the subject of the report;

(4) Office of the State Auditor.

**§31.106. Cost of Audits.** The cost of audits required by the provisions of these sections shall be assessed against the audited entity, and shall be considered a cost of administration of the receivership.

**§31.107. Severability.** If any provision of these sections or the application of any of these sections or any part of these sections to any person or circumstance is held to be invalid for any reason whatever, that invalidity shall not affect the remainder of these sections, and the application of such provision or provisions to other persons or circumstances; any other application which can be given effect without the invalid provision or application shall not be affected thereby. To this end, all provisions of these sections are declared to be severable.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325974

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

Earliest possible date of adoption: August 23, 1993

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

◆ ◆ ◆  
**Subchapter C. Audit Coverages  
Required for Guaranty Associations**

• 28 TAC §§31.201-31.207

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2028, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new §§31.201-31.207 concerning the requirements for, and audit coverages applicable to, each guaranty association established under the Texas Insurance Code, Article 9.48, 21.28-C, or 21.28-D. Proposed new §31.201 and §31.202 state the purpose and applicability of the rule. Proposed new §31.203 prescribes the nature of the audits to be performed. Proposed new §31.204 provides for the scope and frequency of the audits. Proposed new §31.205 contains the audit reporting requirements, and proposed new §31.206 determines the manner of assessing audit costs. Proposed new §31.207 is a severability clause. These proposed rules were developed by the Texas Department of Insurance with review and comment by the Office of the State Auditor as required by Article 21.28, §12(j).

Sandra Autry, associate commissioner for the financial program, has determined that, for the first five-year period the proposed sections will be in effect, there could be moderate fiscal implications for state or local government as a result of enforcing or administering the sections; however, any fiscal impact will be nominal in relation to the benefits to taxpayers because of cost savings generated by the audits. There will be no effect on local employment or local economy. Required audits will be performed by existing staff of the State Auditor's Office.

Ms. Autry also has determined that, for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the section will be more effective audits of the guaranty associations. The costs of audits required by the provisions of these proposed provisions are to be assessed against the audited entity and will be considered administrative costs. However, any costs related to the audits will be nominal in relationship to the benefits to taxpayers because of cost savings generated by the audits.

Comments on the proposal, to be considered by the State Board of Insurance, must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra Autry, Associate Commissioner for the Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Chief Clerk's Office.

These rules are proposed under the Insurance Code, Articles 21.28 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 21.28, §12(j), authorizes the Board to adopt rules related to scope, frequency, reporting requirements and costs of audits for each guaranty association established under the Code, Article 9.48, 21.28-C, or 21.28-D. Article 1.04(b) 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 requirements of available procedures, and prescribe the procedures for adoption of rules of a state administrative agency.

The following are the articles of the Insurance Code that are affected by these rules: the Insurance Code, Articles 9.48; 21.28, §12; 21.28-C; and 1.28-D.

**§31.201. Purpose.** The purpose of these sections is to prescribe the audit requirements and coverages applicable to the Title Insurance Guaranty Association established under the Insurance Code, Article 9.48; to the Property and Casualty Insurance Guaranty Association established under the Insurance Code, Article 21.28-C; and the Life, Accident, Health and Hospital Service Insurance Guaranty Association established under the Insurance Code, Article 21.28-D.

**§31.202. Applicability.** The provisions of this subchapter apply to any guaranty association established under the Insurance Code, Article 9.48, 21.28-C and 2.128-D. Provided, however, that the provisions of this subchapter do not prohibit, preclude or



limit the Board from ordering, conducting or performing an examination of any guaranty association established under the provisions of the Insurance Code, as referenced in this section.

**§31.203. Nature of Audits.** Audits applicable to the guaranty associations subject to the provisions of these sections shall take the form of financial and compliance audits, as set out in paragraph (1) of this section, subject to the provisions of paragraph (2) of this section.

(1) Financial and compliance audit. The financial and compliance audit shall be undertaken to determine whether the financial statements of the audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements. The financial and compliance audit shall be conducted in accordance with generally accepted auditing standards, and shall determine whether the following objectives are being met:

(A) the audited entity has obligated, expended, received and used funds in accordance with the purpose for which those funds have been appropriated or otherwise authorized by law;

(B) the audited entity has obligated, expended, received and used funds in accordance with any limitations, restrictions, conditions or mandatory directions imposed by law on those obligations, expenditures, receipts, or uses;

(C) the audited entity has maintained its books, records and accounts in a manner which accurately reflects its financial and fiscal operations relating to the obligation, receipt, expenditure and use of funds including but not limited to funds represented as being collected for a state purpose;

(D) the audited entity has collected revenues and receipts in accordance with the applicable laws and regulations of this State; and

(E) the audited entity has properly and legally handled or administered any money, negotiable securities, or similar assets received on behalf of the state, or received from the state and held in trust by the audited entity.

(2) Other audit coverages. Nothing in these sections shall preclude the Board or Commissioner from ordering any

entity subject to the provisions of these sections to submit to a special audit other than the audit addressed in paragraph (1) of this section, upon a determination that facts and circumstances warrant such audit.

**§31.204. Scope and Frequency of Audits.**

(a) Annual audit required. Each guaranty association subject to the provisions of these sections shall submit to an annual audit at the end of each calendar year sufficient in scope to address those matters set forth in §31.203(1) of this title (relating to Nature of Audits).

(b) Board or Commissioner may order audit. No provision of these sections prohibits or precludes the Board or Commissioner from ordering any entity subject to the provisions of these sections to submit to special audit requirements, as set out in §31.203(2) of this title (relating to Nature of Audits) at a frequency determined by the Board or Commissioner based upon facts and circumstances.

**§31.105. Audit Reporting Requirements.**

(a) Report required. The State Auditor or other organization or entity conducting any audit authorized or required pursuant to these sections shall prepare a written report for each audit conducted by such auditing entity.

(b) Contents of report. The written report must include a management letter with comments about internal controls, compliance with state and federal laws, and any recommendations for improving operations or program effectiveness, as applicable. The report also must include an opinion on fair presentation of financial statements if the auditing entity considers such an opinion to be a necessary element of the report.

(c) Supplemental items to be reported. The auditing entity's report should also include, to the extent necessary, each of the following items:

(1) an analysis of the overall performance of the entity being audited;

(2) an analysis of the audited entity's financial operations and condition;

(3) an analysis of receipts and expenditures made by each audited entity in connection with receiverships covered by the audit, and an analysis of the adequacy of any required bond under the Insurance Code, Article 21.28, §12(a), in relation to assets, receipts and expenditures of the audited entity;

(d) Filing requirements for audits conducted by the State Auditor. For audits conducted pursuant to the provisions of the Insurance Code, Article 21.28, §12(k), cop-

ies of the auditor's report shall be filed in the manner required by the Government Code, §321.014(c), relating to the requirements for audit reports, no later than March 31 of the year following the year covered by the audit.

(e) Filing requirements for audits conducted by private entities. For audits other than those addressed in subsection (d) of this section, copies of the auditing entity's report shall be filed no later than March 31 of the year following the year or portion of the year covered by the audit to the following recipients:

(1) the Chair of the State Board of Insurance;

(2) the Commissioner of Insurance;

(3) the members of the legislature on a committee with oversight responsibility for the entity or program that is the subject of the report;

(4) Office of the State Auditor; and

(5) the audited entity.

**§31.206. Cost of Audits.** The cost of audits required by the provisions of these sections shall be assessed against the audited entity.

**§31.207. Severability.** If any provision of these sections or the application of any of these sections or any part of these sections to any person or circumstance is held to be invalid for any reason whatever, that invalidity shall not affect the remainder of these sections, and the application of such provision or provisions to other persons or circumstances; any other application which can be given effect without the invalid provision or application shall not be affected thereby. To this end, all provisions of these sections are declared to be severable.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325973

Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: August 23, 1993

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

# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part II. Texas Parks and Wildlife Department

### Chapter 53. Finance

#### Stamp Exemptions

##### • 31 TAC §53.15

The Texas Parks and Wildlife Commissions proposes new §53.15, concerning stamp exemptions authorized by the Commission. The section delegates Commission authority to the Director so that he or she may exempt youth participating in organized hunting and fishing events from the requirement to purchase stamps. The section further identifies which stamps may be waived by the Director. Stamp exemptions are authorized by Chapter 43, Parks and Wildlife Code.

Jim Dickinson, deputy executive director, has determined that for the first five-year period the rule is in effect there will be fiscal implications as a result of enforcing or administering the rule. The effect on state government will be an estimated net decrease in revenue of \$2,500 in 1994, \$2,500 in 1995, \$2,500 in 1996, \$2,500 in 1997, and \$2,500 in 1998. There will be no effect on local governments.

Mr. Dickinson also has determined that for each year of the first five years the rule as proposed is in effect the public benefit will be that youth may be allowed to participate in organized hunting and fishing events without having to purchase stamps. These events are intended to provide youth valuable outdoor experiences and encourage their enjoyment of Texas' natural resources. In many instances, stamp exemptions will enable participation that might not otherwise be possible. The anticipated economic cost to persons affected by the proposed rule will be savings resulting from waived stamp requirements.

The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A as this agency has determined that the rule as proposed will not impact local economics.

Public comment may be submitted to Jim Dickinson, Deputy Executive Director, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4417.

The new section is proposed under the Parks and Wildlife Code, Chapter 43, which provides the Texas Parks and Wildlife Commission with the authority to exempt certain persons from stamp requirements.

**§53.15. Stamp Exemptions.** The Commission grants the Director authority to exempt youth participating in any event organized for the primary purpose of promoting participation in fishing or hunting activities from the requirement to purchase the following stamps:

- (1) white-winged dove stamp;
  - (2) archery hunting stamp;
  - (3) turkey stamp;
  - (4) waterfowl stamp;
  - (5) saltwater sportfishing stamp;
- and
- (6) freshwater trout stamp.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325841 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: 1-800-792-1112, Ext. 4433 or (512) 389-4433

#### License Fees and Boat and Motor Fees

##### • 31 TAC §53.19

The Texas Parks and Wildlife Commission proposes new §53.19, concerning cancellation. Under recently adopted §53.17, concerning vessel registration agents and §53.18, concerning surety bonds, boat dealers can become agents for the department, which allows them to register and title the vessels and motors they sell and collect related fees and taxes as a service to their customers. Section 53.19 would establish the department's ability to cancel the authority of vessel registration agents if the agent failed to comply with the terms set forth in the agreement with the department.

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

Mr. Dickinson also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the public benefit anticipated as a result of enforcing the rule is that vessel registration agents who do not comply with the terms set forth in their agreements with the department will not be entrusted to register and title vessels and collect fees and taxes on their customers' behalfs. The department's ability to cancel the authority of non-compliant boat dealers will serve to protect consumers' interests by preventing problems in the registering and titling of their vessels and motors and in the collection of fees and taxes owed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

The department has not filed a local employment impact statement with the Texas Employment Commission in compliance Texas

Parks and Wildlife Department with the Administrative Procedure and Texas Act, §4A, as this agency has determined that the rules as proposed will not impact local economics.

Comments on the proposal may be submitted to Jim Dickinson, Deputy Executive Director, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4417.

The new section is proposed under the authority of the Texas Parks and Wildlife Code, Chapter 31, §31.006, which authorizes the Parks and Wildlife Commission to promulgate rules and regulations necessary to the accomplishment of its duties.

**§53.19. Cancellation.** The Texas Parks and Wildlife Department may cancel the authority of a vessel registration agent to register and title vessels and motors and collect related fees and taxes if the person fails to comply with the terms set forth in the agreement with the department.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325840 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Proposed date of adoption: September 1, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

### Chapter 55. Law Enforcement

#### Deputy Game Warden Commission

##### • 31 TAC §55.63

The Texas Parks and Wildlife Commission proposes an amendment to 31 TAC §55.63, concerning the Deputy Game Warden Program. The proposed amendment would require a Deputy Game Warden training school to be scheduled when a minimum of 12 Deputy Game Wardens have been appointed since the last training school, or at such time as established by the Executive Director of the Parks and Wildlife Department.

Robin Riechers, staff economist, has determined that for the first five-year period the rule is in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Riechers, has determined that for the first five years the rule is in effect the anticipated public benefit is to reduce Texas Parks and Wildlife Department costs associated with the training of Deputy Game Wardens. There will be a minimal effect on small businesses. The expected economic cost to persons who are required to comply with the proposed rules will be minimal.

The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, as this agency has determined that the rules as proposed will not impact local economics.

Comments on the proposal may be submitted to Charles Hensley, Director of Law Enforcement, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4845, or 1 (800) 792-1112, Extension 4845.

The amendment is proposed under the Parks and Wildlife Code, Subchapter B, Chapter 11, §11.020(b), which authorizes the Director to implement training for Deputy Game Wardens.

#### §55.63. Training.

(a) (No change.)

(b) A minimum of 12 appointees is required before a school will be scheduled, or at such a time as established by the Executive Director. [At least one school will be held every two years.]

(c) (No change.)

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325842 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: 1 (800) 792-1112, Extension 4433 or (512) 389-4433

## Chapter 57. Fisheries

### Mussels and Clams

#### • 31 TAC §57.156, §57.158

The Texas Parks and Wildlife Commission proposes new §57.156 and §57.158, concerning the harvest of mussels and clams from public water. The new proclamation will provide the only regulations issued under the authority of Chapter 78 of the Parks and Wildlife Code. Regulations concerning freshwater mussels supercede those found in 31 TAC §65.80.

Robin Riechers, staff economist, has determined that there will be minimal fiscal impacts to state or local governments as a result of enforcing or administering the rules. The Department has not filed a local employment impact statement with the Texas Employment Commission because the proposed rules are identical to rules already in place.

The public benefit anticipated as a result of enforcing the rules will include conservation of a valuable natural resource in Texas. There will be a minimal effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. The Department has not filed a local employment impact statement with the Texas Employment Commission because the proposed rules are substantially identical to the superceded rules.

Comments on the proposal may be submitted to Earl Chilton, Staff Support Specialist, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4652 or 1 (800) 792-1112, extension 4652.

The new sections are proposed under the Texas Parks and Wildlife Code, Chapter 78, which provides the Texas Parks and Wildlife Commission with authority to regulate taking, possession, purchase, and sale of mussels and clams.

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

Day-As used in these regulations is that period of time that begins at midnight and ends at midnight.

Freshwater mussel-bivalve mollusks of the family Unionidae (collectively including Amblimidae and Margaritiferidae) as listed by the American Fisheries Society Special Publication 16.

Mussels and clams-As used in these regulations include all freshwater and marine bivalve mollusks except oysters.

#### §57.158. Mussels and Clams.

##### (a) General Rules.

(1) It is unlawful for any person to take mussels and clams, within a protected size limit, in greater numbers, by other means, or at any time or place, other than as permitted under these rules.

(2) Marl, Sand, Gravel, Shell, and Mudshell may be taken under the provisions of Texas Parks and Wildlife Code, Subtitle F, Chapter 86.

##### (b) Bag, possession, and size limits.

(1) It is unlawful for any person while fishing on public waters to have in his possession mussels and clams in excess of the daily bag limit or within a protected size limit.

(2) It is unlawful for any person to:

(A) take more than 75 pounds of whole mussels and clams, including shells per day on Saturday or Sunday of each week;

(B) possess more than 75 pounds of whole mussels and clams, including their shells, per day on Saturday or Sunday of each week while on public water or within 500 yards of any public water;

(C) take or possess mussels and clams, including their shells, of the following species that will pass through a ring with an inside diameter (I D) specified for that species.

<u>Species</u>	<u>Ring I.D. in inches</u>
Washboard, <u>Megalonaias nervosa</u>	4.00
Threeridges and roundlakes, <u>Amblema spp.</u>	2.75
Mapleleaves and pimplebacks, <u>Quadrula spp.</u>	2.75
Tampico pearlymussel, <u>Cyrtornaias tampicoensis</u>	2.75
All Other Species of Freshwater Mussels	2.50

(c) Devices, Means, and Methods.

(1) It is unlawful for any person to take or possess mussels and clams by an device, means, or method other than as authorized in these rules or in the Texas Parks and Wildlife Code, Chapter 78.

(2) Mussels and clams may be taken only by hand.

(d) Seasons, Times, and Places.

(1) It is unlawful for any person to take mussels and clams from 30 minutes after sunset to 30 minutes before sunrise of each day.

(2) All public waters of the state are open to mussel and clam harvest except that mussels and clams may not be taken from the following rivers or creeks and their tributaries:

(A) North Sulphur River from State Highway 50 in Hunt County to State Highway 24 in Delta and Lamar Counties;

(B) South Sulphur River from State Highway 50 in Hunt County to State Highway 154 in Hopkins County;

(C) Sulphur River from State Highway 37 in Franklin County to U.S. Highway 271 in Titus County;

(D) White Oak Creek from State Highway 37 in Franklin County to U.S. Highway 271 in Titus County;

(E) Big Cypress Creek from the Dam at Lake Bob Sandlin downstream to U. S. Highway 271 in Camp County;

(F) Sabine River from the dam at Lake Tawakoni downstream to State Highway 19 in Rains and Van Zandt Counties, from FM 14 to State Highway 155 in

Smith County and from State Highway 43 downstream to U.S. Highway 59 in Harrison and Panola Counties.

(G) Angelina from its source in Rusk County to its confluence with the Neches River in Jasper County;

(H) Neches River from the Dam at Lake B. A. Steinhagen downstream to its confluence with Pine Island Bayou in Orange County;

(I) Pine Island Bayou from its source in Hardin County to the confluence with the Neches River in Hardin County;

(J) Trinity River from State Highway 34 in Kaufman and Ellis Counties downstream to the FM 85 in Navarro County and from the dam at Lake Livingston downstream to U.S. Highway 59 in Polk County;

(K) Brazos River from U.S. Highway 380 downstream to U.S. Highway 83 in Stonewall County; from the dam at Possum Kingdom Reservoir downstream to the bridge at U.S. Highway 180 in Palo Pinto County and from the bridge at State Highway 7 downstream to the bridge at Ranch Road 413 in Falls County;

(L) The Colorado River from its source in Dawson County downstream to Ranch Road 1205 in Borden County, from the dam at Lake E. V. Spence downstream to U.S. Highway 277 in Coke County; and from the U.S. Highway 377 Bridge in McCulloch and Brown Counties to Ranch Road 45 in Mills and San Saba Counties;

(M) The North Concho River from the State Highway 163 in Sterling County to the city limits of Water Valley in Tom Green County;

(N) The Concho River from the mouth of Kickapoo Creek downstream to the U.S. Highway 83 Bridge in Concho County;

(O) The San Saba River from the Ranch Road 1311 Bridge in Menard County downstream to the U.S. Highway 87 Bridge in McCulloch County;

(P) The Guadalupe River from the State Highway 123 Bridge in Guadalupe County downstream to the State Highway 80 Bridge in Gonzales County;

(Q) The San Marcos River from its source in Hays County downstream to the confluence with the Guadalupe River in Gonzales County; and

(R) The Comal River from its source downstream to its confluence with the Guadalupe River in Comal County.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-8325843

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

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## Chapter 61. Design and Construction

### Guidelines for Administration of Local Land and Water Conservation Fund Projects

#### • 31 TAC §61.121, §61.131

The Texas Parks and Wildlife Commission proposes amendments to §61.121 and §61.131, concerning Guidelines for Administration of Local Land and Water Conservation Fund Projects. Section 61.121 is proposed for amendment by adding a section which will allow the Department to recover administrative and related costs for administration of local grant projects. Section 61.131 is proposed for amendment by adding a section which re-adopts on a temporary basis §61.81 and §61.121 for administration of the Texas Recreation and Parks Account and which adopts the procedural guide for Land and Water Conservation Fund, and guidelines for administration of Texas Local Parks, Recreation, and Open Space Fund projects by reference. These amendments are necessary to allow for the efficient administration of the grant programs noted and to take into account the creation of the Texas Recreation and Parks Account established by acts of the Texas Legislature, 73rd Regular Session.

Jim Dickinson, deputy executive director, has determined that for the first five-year period the rule will be in effect there will be fiscal implications as a result of enforcing or administering the rule.

The effect on local government will be an estimated net loss of Park Grant Revenue of \$400,000 in 1994; \$400,000 in 1995; \$400,000 in 1996; \$400,000 in 1997; and \$400,000 in 1998. There will be no effect on state government.

Mr. Dickinson also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rules as proposed will ensure the efficient transition from funding park grants as the result of the creation of the Texas Recreation and Parks Account by the Texas Legislature, and ensure sufficient funds will be available to efficiently administer the park grant program. There will be no effect on small businesses. The anticipated economic impact to local governments will be the reduction of park grant funds used by the department for administration. The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administration Procedure and Texas Register Act, §4A as this agency has determined that the rules as proposed will not impact local economics.

Comments may be submitted to Tim Hogsett, Chief, Park Grant Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4948.

The amendments are proposed under the authority of the Texas Parks and Wildlife Code, §24.005 (as amended by Acts of Texas Legislature, 73rd Regular Session) which provides that in establishing the pro-

gram of grants under this section, the department shall adopt rules and regulations for grant assistance.

**§61.121. Policy.** It is the commission's policy that the state liaison officer shall administer local projects in accord with the following guidelines, with interpretation of intent to be made to provide the greatest number of outdoor recreational opportunities for Texas in accord with priorities of the Texas Outdoor Recreation Plan

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

(8) Any provision of this policy shall be automatically amended should the federal government issue a regulation in conflict with this policy, provided that the state liaison officer shall submit to the commission for consideration any federal action in conflict with this policy.

(9) The department is authorized to recover from project sponsors of projects funded through the program, administrative costs sufficient to support operation, administration, and related costs of the grant program.

**§61.131. Policy.** It is the Texas Parks and Wildlife Commission policy that the executive director shall administer local projects in accord with the following guidelines with interpretation of intent to be made to provide the greatest number of outdoor recreational opportunities for Texas in accord with priorities of the Texas Outdoor Recreation Plan. In keeping with this policy, local projects will not be approved from both the Texas Local Parks, Recreation, and Open Space Fund and the Federal Land and Water Conservation Fund Program unless extraordinary circumstances dictate that high priority public needs will not be met without the full or partial funding of both programs.

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

(3) Section 61.81 of this title (relating to Application Procedures), the procedural guide for Land and Water Conservation Fund Program, is adopted by reference for the Texas Recreation and Parks Account for the period September 1, 1993-September 1, 1994. Copies may be obtained from Texas Parks and Wildlife Department, Grants Program, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4948.

(4) Section 61.121 of this title (relating to Policy), guidelines for administration of Local Land and Water Conservation Fund Program and guidelines for administration of Texas Local Parks, Recreation, and Open Space Fund projects are adopted by reference for the Texas Recreation and Parks Account for the period September 1, 1993-September

1, 1994. Copies may be obtained from Texas Parks and Wildlife Department, Grants Program, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4948.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325894

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: August 25, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

## Chapter 65. Wildlife

### Subchapter A. Statewide Hunting and Fishing

#### • 31 TAC §§65.3, 65.9, 65.26-65.28, 65.30, 65.31, 65.40, 65.72

The Texas Parks and Wildlife Commission proposes to amendments to §§65.3, 65.9, 65.27, 65.31, 65.40, and 65.72, and new §§65.26, 65.28, and 65.30, concerning the Statewide Hunting and Fishing Proclamation.

The repeal of existing §65.26 and §65.30 will be proposed simultaneously in another submission.

The new rules and amendments as proposed are based upon scientific surveys of wildlife resources and represent required findings of fact. Additionally, typographical errors at §65.40 and §65.72 were discovered in the May 20, 1993, adopted version of the Statewide Hunting and Fishing Proclamation which need to be corrected. These adopted rules were published in the May 21, 1993, issue of the *Texas Register* (18 TexReg 3278).

The proposed amendments will add new definitions necessary to implement the new rules proposed for §§65.26, 65.28, and 65.30 relative to the white-tailed antlerless deer control program and clarify existing text and correct errors.

The proposed new §65.26 concerns evaluation and appraisal of wildlife habitat necessary to make application for landowner assisted management permits.

New §65.28 and §65.30 will permit the taking of antlerless white-tailed deer under a permit system during the open deer season to enable land managers to appropriately control their deer populations to prevent degradation of habitat and will allow landowners to provide relevant data to the department to justify an antlerless permit quota.

The antlerless deer control permit system permits a landowner additional flexibility in the control of deer populations to prevent vegetative degradation. This permit system allows persons who have an approved wildlife

management plan to make application to the department for antlerless deer control permits and be issued a regulated number of antlerless deer control permits based upon antlerless harvest quotas specified in the approved wildlife management plan. The antlerless deer control permits then may be used by the landowner or designee to take antlerless white-tailed deer up to the number of permits issued. This proposed permit system is designed to prevent habitat destruction by deer whose population size, through department investigations, has been determined to be near to or in excess of the carrying capacity of the habitat. The antlerless deer control permit system is based upon studies, surveys, and investigations performed by a Texas Parks and Wildlife Department (TPWD) biologist or any wildlife biologist who will make application to the department for the issuance of antlerless deer control permits. Approval of the application for antlerless deer control permits will be by a TPWD Wildlife Branch CS VI or greater biologist within the conditions established by the requisite approved wildlife management plan for the subject tract of land.

Robin Riechers, staff economist, has determined that for the first five-years the new rules are in effect there will be minimal fiscal implications to state or local governments as a result of enforcing or administering the rules.

Expenditures in certain locales may be increased or decreased due to the antlerless deer control permit system, but these changes cannot be determined at the present time.

The proposed amendments will pose no fiscal implications upon state or local governments.

Ms. Riechers, also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will permit landowners or their agents to control populations of white-tailed deer that have exceeded the carrying capacity of the habitat. Regulated harvest is the only reliable method to control deer populations. The antlerless deer control permit system offers land managers increased flexibility in regulation of harvest. There will be no effect on small businesses. There will be fiscal implications to persons who are required to comply with the rules as proposed. A \$300 application fee is proposed for those land managers who choose to participate in the program. Since the new rules and amendments as proposed are based upon acknowledged wildlife management tenets it is anticipated that the net value of economic effects to the state will be positive. Net economic effects to land managers who choose to augment their hunter harvest with this system can not at this time be known. Net economic effects to hunters who may be supplanted by imposition of this new system of deer population control is also unknown.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with §4A of the Administrative Procedure and Texas Register Act and as of this date has not received a reply as to the relative local employment impacts anticipated.

Comments on the rules as proposed may be submitted to Scot Williamson, Program Director for Big Game, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4774 or 1 (800) 792-1112, extension 4774.

The new sections and amendments are proposed under the Texas Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1963), which provides the Texas Parks and Wildlife Commission with authority to establish wildlife resource regulations including seasons, bag limits, means, methods, for this state, and specifically §61.057, to issue permits for the taking of antlerless white-tailed deer and §11-027(b), related to authority to charge for permits.

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

**Agent**—A person who is named in the application for antlerless permits or antlerless deer control permits by the landowner to act on behalf of the landowner for purposes of the wildlife management plan, LAMPS recommendation or wildlife habitat and harvest annual recommendation.

**Antlerless Permit**—A permit issued by the department under the auspices of a Wildlife Habitat and Harvest Annual Recommendation that allows the taking of one antlerless deer.

**Antlerless Deer Control Permit**—A permit that when attached to a legally harvested deer allows the carcass to be possessed without the hunting license white-tailed deer tag attached.

**LAMPS Annual Recommendation**—An evaluation of the deer population and deer habitat on a tract of land derived by data collected by the landowner, provided to the department on a LAMPS application or LAMPS hunter harvest form and reviewed by the department to determine an allowable issuance of LAMPS antlerless permits.

**LAMPS Antlerless Permit**—A permit issued by the department under the auspices of a LAMPS annual recommendation that allows the taking of one antlerless deer.

**Wildlife Habitat and Harvest Annual Recommendation**—A written document provided to the landowner or landowner's agent and approved by a department biologist after an on-site evaluation is made of the deer population and deer habitat on a tract of land.

**Wildlife Management Plan**—A written document provided to the landowner or landowner's agent and approved by a department biologist of at least a CS VI level following an evaluation of wildlife habitat and populations.

#### §65.9. Open Seasons: General Rules.

(a)-(1) (No change.)

(m) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the carcass or a part of a carcass is tagged with a hunter's document by the person who killed or caught the wildlife resource, except a hunter's document is not required for white-tailed deer tagged with an antlerless deer control permit. The hunter's document shall accompany the carcass or a part of the carcass until reaching final destination and the document must contain the following information:

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

#### §65.26. Wildlife Habitat and Harvest Annual Recommendation.

(a) A Wildlife Habitat and Harvest Annual Recommendation, (see §65.3 of this title (relating to Definitions)) shall include:

(1) measurements of density, production, and sex composition of the deer population present on the property;

(2) measurements of the number, sex, and where possible, age of the deer harvested from the property;

(3) evaluation and appraisal of habitats determined by Texas Parks and Wildlife Department to be of significance to white-tailed deer;

(4) the number of hunters on the property and the number of days that they hunted;

(5) descriptions of land management practices occurring on the property.

(b) A Wildlife Habitat and Harvest Annual Recommendation shall specify the number of antlered and/or antlerless deer to be harvested from a given tract of land.

(c) A Wildlife Habitat and Harvest Annual Recommendation, except under the provisions of subsections (d), (e), and (f) of this section, shall require each antlerless deer taken to be tagged with an antlerless deer permit that is issued by the landowner.

(d) A Wildlife Habitat and Harvest Annual Recommendation will not be valid without the signature of a wildlife branch staff member indicating the recommendation has been approved. Wildlife Habitat and Harvest Annual Recommendations shall be valid for one year following the date of signature by the wildlife branch staff member.

(e) No antlerless mule deer or white-tailed deer permit is required for a deer legally killed with longbow and arrow

during the archery only open season (see §65.40(2) and (4) of this title (relating to Deer)).

(f) No antlerless deer permit is required for deer legally taken during white-tailed deer general open seasons (see §65.40(1) and (3) of this title relating to Deer) and the Special (South Texas) late season, when regulations provide that antlerless white-tailed deer may be taken for the entire general open season without an antlerless deer permit.

(g) All deer taken under a Wildlife Habitat and Harvest Annual Recommendation must be tagged with the appropriate tag from a valid hunting license.

(h) The bag limit for hunters on a property under a Wildlife Habitat and Harvest Annual Recommendation shall be the same as established by the Commission for the county or counties in which the property lies.

(i) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for antlerless deer permits.

(j) It is unlawful for a landowner or landowner's agent to issue an antlerless deer permit to a hunter to hunt on a tract of land other than the designated tract for which the permit was issued.

(k) The landowners or landowner's agents shall issue permits to individual hunters before the hunter begins his hunt on the designated tract of land.

(l) It is unlawful for a hunter to use an antlerless deer permit on a tract of land other than the designated tract for which the permit was issued.

(m) The antlerless permit must be immediately attached to each antlerless deer taken, and shall remain attached until the carcass has reached its final destination and has been finally processed.

(n) The antlerless deer permit will not be valid unless the date of kill, the hunters name and the signature of the owner or agent on whose tract the deer was killed are legibly printed on the permit.

#### **§65.27. Antlerless Mule Deer, Pronghorn Antelope, and Elk Permits.**

(a) No person may hunt antlerless mule deer, pronghorn antelope, or elk, [or antlerless white-tailed deer] in areas where permits are prescribed unless he first procures a valid permit issued by the landowner.

(b) It is unlawful to use an antlerless mule deer, antelope, or elk[, or antlerless white-tailed deer] permit on more than one antlerless mule-deer, antelope, elk[, or antlerless white-tailed deer] .

(c) (No change.)

(d) No permit is valid unless it has been issued, used, and possessed strictly in accordance with this section; §65.29 of this title (relating to Antelope Permits), §65.31 of this title (relating to Antlerless Mule Deer Permits [and White-tailed Deer Permits and Tags]); and §65.33 of this title (relating to Elk Permits).

#### **§65.28. Landowner Assisted Management Permit System (LAMPS).**

(a) A LAMPS annual recommendation, (see §65.3 of this title (relating to Definitions)) shall include:

(1) estimates of deer density, production, and sex composition of the deer population present on the property;

(2) estimates of the number, sex, and where possible, age of the deer harvested from the property;

(3) a listing of acreages of habitats determined by Texas Parks and Wildlife Department to be of significance to white-tailed deer;

(4) the number of hunters on the property and the number of days that they hunted;

(5) descriptions of land management practices occurring on the property.

(b) A LAMPS annual recommendation shall specify the number of antlerless deer to be harvested from a given tract of land.

(c) A LAMPS annual recommendation, except as provided in subsection (d) of this section, shall require each antlerless deer taken to be tagged with an LAMPS antlerless deer permit.

(d) No LAMPS permit is required for a deer legally killed with longbow and arrow during the archery only open season (see §65.40(2) and (4) of this title (relating to Deer)).

(e) No LAMPS permit is valid unless it has been issued, used, and possessed in accordance with §65. 27 of this title (relating to Permits).

(f) All deer taken under a LAMPS annual recommendation must be tagged with the appropriate hunting license tag and the LAMPS permit; and both shall remain attached until the carcass has reached its final destination and has been finally processed.

(g) The bag limit for individual hunters on a property under LAMPS will be the same as established by the Commission for the county or counties in which the property lies.

(h) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for LAMPS permits.

(i) It is unlawful for a landowner or landowner's agent to issue a LAMPS permit to a hunter to hunt on a tract of land other than the designated tract for which the permit was issued.

(j) The landowners or landowner's agents shall issue permits to individual hunters before the hunter begins his hunt on the designated tract.

(k) It is unlawful for a hunter to use a LAMPS permit on a tract of land other than the designated tract for which the permit was issued.

(l) The LAMPS permit will not be valid unless the date of kill, the hunters name and the signature of the owner or agent on whose land the deer was killed are legibly printed on the permit.

(m) A LAMPS permit may not be issued when the total contiguous acreage described in the application is less than 200 acres.

#### **§65.30. Wildlife Management Plan and Antlerless Deer Control Permits.**

(a) A Wildlife Management Plan, (see §65.3 of this title (relating to Definitions)) shall include:

(1) measurements of density, production, and sex composition of the deer population present on the property;

(2) evaluation and appraisal of carrying capacity of habitats determined by Texas Parks and Wildlife Department to be of significance to white-tailed deer and the threat of damage to deer habitat resulting from overpopulation of deer.

(b) A Wildlife Management Plan will not be valid without the signature of a wildlife branch staff member indicating the plan has been reviewed and approved. Approved Wildlife Management Plans shall be valid for not more than one year following the date of signature by the wildlife branch staff member.

(c) The antlerless deer control permits shall be issued to a landowner or landowner's agent designated on the application form for any parcel of land in any county of Texas shown to be threatened by overpopulation of deer.

(d) A antlerless deer control permit shall allow the taking of 1 antlerless white-tailed deer.

(e) Antlerless deer control permit(s) shall be issued only to the landowner or the landowner's agent.

(1) The antlerless deer control permit(s) shall be issued only after the land-

owner or landowner's agent has made application for such permit(s) to the department on a form prescribed by the department. The antlerless deer control permit application shall require, in part, the name, address, and hunting license number of all agents who will be hunting antlerless white-tailed deer for control purposes under the wildlife management plan. The maximum number of agents allowed on one application for antlerless deer control permits shall not exceed one tenth of the number of antlerless deer recommended by the Wildlife Management Plan for harvest. The application shall not be accepted as complete without a departmental approved Wildlife Management Plan. For the application to be considered, the wildlife management plan must recommend an antlerless harvest of greater than 20 antlerless deer and must be approved by a Texas Parks and Wildlife Department (TPWD) biologist classified not less than CS VI. Wildlife Management Plans shall be subject to departmental standards and guidelines.

(2) The number of antlerless deer control permits to be issued shall be specified in the deer management plan following scientific studies that determine the number of antlerless deer to be harvested to lower the population in order to keep the population prudently within the carrying capacity of the habitat, thereby preventing overuse of habitat by deer. The permit allocation may not be used as a means to solely alter sex ratios of deer herd on the managed property.

(3) The antlerless deer control permit(s) shall be issued only after the landowner or landowner's agent has paid to the department fees equaling \$300.

(f) The antlerless white-tailed deer bag limit for the landowner or landowner's agent of the property described in the Wildlife Management Plan shall not exceed 300 antlerless white-tailed deer.

(g) The antlerless deer control permit shall be valid only during a lawful open deer season during a year beginning on September 1 of one year through August 31 of the following year within which they are issued and during legal shooting hours, as prescribed in §65.40 of this title (relating to Deer: White-tailed and Mule Deer) and Texas Parks and Wildlife Code, §62.004 (relating to Hunting at Night).

(h) Deer taken with a antlerless deer control permit shall be taken only from the property described in the Wildlife Management Plan.

(i) All edible parts of a deer taken under this section shall be kept in an edible condition in compliance with Parks and Wildlife Code, §62.011 (Retrieval and Waste of Game).

(j) A landowner or landowner's agent commits an offense if the landowner or landowner's agent hunts antlerless white-tailed deer for control purposes under the wildlife management plan without a antlerless deer control permit in his or her immediate possession.

(k) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for antlerless deer control permits.

(l) It is unlawful for a landowner or landowner's agent to hunt on a tract of land other than the designated tract for which the permit was issued.

(m) The owners or agents shall possess antlerless deer control permits before the landowner or landowner's agent begins his hunt on the designated tract.

(n) It is unlawful for any other person to use a antlerless deer control permit on a tract of land other than the designated tract for which the permit was issued.

(o) The antlerless deer control permit shall be immediately attached to the carcass upon kill and shall remain attached to the carcass until the carcass has been delivered to its final destination and is finally processed. No other tag shall be required to be attached to the carcass.

(p) The antlerless deer control permit will not be valid unless the following information is written in the proper places on it:

(1) date of kill;

(2) the agent's name, address, and hunting license number;

(3) the landowners name, landowner's ranch name, and location of the ranch; and

(4) the signature of the owner or agent on whose tract the deer was killed verifying that the permit was used in compliance with departmental regulations.

(q) A antlerless deer control permit harvest report form provided by the department shall be submitted to the department by the landowner or landowner's agent not later than the fourteenth day of February following the kill or of the year of issue and must contain the sex and date of kill for each deer tagged with a antlerless deer control permit and the name, address, telephone number, and hunting license number of the landowner or landowner's agent.

(r) It is an offense if the taking of deer under the authority of the antlerless deer control permit is commenced less than 72 hours before the Regional Law Enforcement Director of the department for that area of the state is notified of such action.

(s) Each landowner receiving antlerless deer control permits shall either donate \$1,000 to the Texas Big Game Awards Program to promote youth hunting or shall sign a contract with the department to provide public hunting opportunity of a form determined to be acceptable by the Executive Director, such acceptable forms of public hunting include the following.

(1) The landowner will provide one guided quality buck deer hunt of no more than three days duration on the landowners managed property for one buck deer to be provided to a public hunter chosen by random drawing by the department, with the hunter bearing all expenses for travel and subsistence.

(2) The landowner shall pay to the department all expenses, up to \$2,500, associated with purchasing one guided quality buck deer hunt of no more than three days duration for one buck deer to be provided to a public hunter chosen by random drawing by the department, with the hunter bearing all expenses for travel and subsistence.

(3) The landowner shall host a youth hunt of no more than three days duration for deer of either sex at the landowner's discretion, providing hunting opportunity for no less than ten youth accompanied by departmental employees, with the landowner paying \$500 to the department to offset costs associated with the hunt, and imposing no stricter limits on the take of deer than required by the Statewide Hunting and Fishing Proclamation.

(4) By permission of the Executive Director, the landowner shall contract with the department to provide an alternative public hunting opportunity, which in the judgement of the Executive Director is equivalent in value to paragraphs (1), (2), or (3) of this section, with the form of that hunting opportunity to be described in detail and in writing.

#### *§65.31. Antlerless Mule Deer [and White-tailed Deer] Permits.*

(a) In all counties where antlerless mule deer [or white-tailed deer] are to be harvested, the department shall issue antlerless mule deer [or white-tailed deer] hunting permits, except where subsections (h) and (i) of this section apply, for designated tracts of land only to the landowners or their agents only after the owners or agents have applied in writing for the exact number of permits to be used on the designated tracts.

(b) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for antlerless mule deer [or white-tailed deer] hunting permits.



(c) It is unlawful for a landowner or landowner's agent to issue an antlerless mule deer [or white-tailed deer] hunting permit to a hunter to hunt on a tract of land other than the designated tract for which the permit was issued.

(d) The owners or agents shall then issue permits to individual hunters before the hunter begins his hunt on the designated tracts.

(e) It is unlawful for a person to possess an antlerless mule deer [or white-tailed deer], unless the person has been issued an antlerless mule deer [or white-tailed deer] hunting permit on which appear:

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

(f) It is unlawful for a hunter to use an antlerless mule deer [or white-tailed deer] hunting permit on a tract of land other than the designated tract for which the permit was issued.

(g) The permit must be attached to each antlerless mule deer [or white-tailed deer] taken, and shall remain attached until the deer has reached its final destination as defined in Texas Parks and Wildlife Code, §42.001(4).

(h) No antlerless mule deer [or white-tailed deer] hunting permit is required for a deer legally killed with longbow and arrow during the archery only open season §65.40(2) and (4) of this title (relating to Deer), when bag limits are designated as either sex.

(i) No antlerless mule deer [or white-tailed deer] hunting permit is required for deer legally taken during [white-tailed deer] mule deer general open season (see §65.40(3) of this title (relating to Deer)), when regulations provide that antlerless mule deer [or white-tailed deer] may be taken without an antlerless deer permit.

**§65.40. Deer: White-tailed and Mule Deer.** No person may take more than the aggregate total of six deer per license year; of which no more than two may be mule deer, only one of which may be a buck mule deer; no more than three white-tailed buck deer, or no more than six antlerless deer, both species combined.

(1) White-tailed deer: general open seasons, bag, and possession limits shall be as follows.

(A)-(C) (No change.)

(D) No person may take or possess more than one white-tailed buck deer per license year from counties, in the aggregate, listed within this subparagraph.

(i)-(ii) (No change.)

(iii) In Fisher (west of State Highway 70), Hemphill, Hood, Jack, Karnes, Kent (south of U.S. Highway 380 [180]), Parker (west of FM 51 and State Highway 171), Scurry, Somervell, Wheeler, Wilson, and Young Counties, there is an open season for white-tailed deer.

(I)-(III) (No change.)

(iv) (No change.)

(v) In Anderson, Armstrong, Austin, Bastrop, Borden, Bowie, Brazos, Briscoe, Burleson, Caldwell, Camp, Carson, Cass, Chambers, Cherokee, Childress, Collingsworth, Colorado, Cottle, Crane, Crosby, Delta, De Witt, Dickens, Donley, Ector, Ellis, Falls, Fannin, Fayette, Fisher (east of State Highway 70), Floyd, Foard, Franklin, Freestone, Garza, Goliad (north of U.S. Highway 59), Gonzales, Gray, Gregg, Grimes, Guadalupe, Hall, Hardeman, Harris, Harrison, Haskell, Hopkins, Houston, Hutchinson, Jackson (north of U.S. Highway 59), Jefferson, Jones, Kent (north of U.S. Highway 380 [180]), King, Knox, Lamar, Lavaca, Lee, Leon, Liberty (only west of the Trinity River and south of U.S. Highway 90), Limestone, Lipscomb, Loving, Madison, Marion, Midland, Milam, Montgomery, Morris, Motley, Navarro, Ochiltree, Orange, Rains, Randall, Red River, Roberts, Robertson, San Jacinto, Smith, Stonewall, Swisher, Titus, Upshur, Upton (north of U.S. Highway 67 and west of State Highway 349), Van Zandt, Victoria (north of U.S. Highway 59), Walker, Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Wichita, Wilbarger, and Wood Counties, there is an open season for buck white-tailed deer only, except that antlerless deer may be taken only by the antlerless permit authorized by a Deer Management Plan (see §65.26 of this title (relating to Deer Management Plan)).

(I)-(III) (No change.)

(vi)-(viii) (No change.)

(E) (No change.)

(2)-(3) (No change.)

(4) Mule deer: archery only open seasons, bag, and possession limits shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Cottle, Crane, Crockett, Crosby, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Garza, Gray, Hall, Hartley, Hemphill, Hutchinson, Jeff Davis, Kent, King, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler Counties, there is an open season during which mule deer may be taken only with longbow and arrows.

(i) Open season: October 1-31 [October 1-November 1, 1992].

(ii) (No change.)

(B) In Brewster, Culberson, Hudspeth, Pecos, Presidio, and Terrell Counties, there is an open season during which mule deer may be taken only with longbow and arrows.

(i) October 1-31 [October 1-November 1, 1992].

(ii) (No change.)

(C)-(D) (No change.)

(5) (No change.)

**§65.72. Fish.**

(a) (No change.)

(b) Bag, possession, and length limits.

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

(4) There are no bag, possession, or length limits on game or nongame fish, except as provided in these rules.

(A) (No change.)

(B) Exceptions to Statewide daily bag, possession, and length limits shall be as follows:

(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth and smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson)	5 (in aggregate)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in aggregate)	14	
Bass: largemouth.			
Lakes Brownwood (Brown), Coleman (Coleman), and Conroe (Montgomery and Walker).	5	16	
Lakes Fairfield (Freestone), San Augustine City (San Augustine), Ray Roberts (Denton, Cooke, and Grayson), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), Raven (Walker), Madisonville (Madison), Bright (Williamson), and Cooper (Delta and Hopkins).	3	18	
Lake Braunig (Bexar).	2	21	
Nelson Park Lake (Taylor), Buck Lake (Kimble), and Calliham State Park Lake (McMullen).	0	No Limit	Catch and release only.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Purtis Creek State Park Lake (Henderson and Van Zandt) and Gibbons Creek Reservoir (Grimes).	0	No Limit	Catch and release only except that any bass over 22 inches in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek State Park or Gibbons Creek Park weigh station. After weighing, the bass must be released immediately back into the lake or donated to the Lone Star Lunker Program.
Lakes Pinkston (Shelby), Waxahachie (Ellis), Bridgeport (Jack and Wise), Weatherford (Parker), Georgetown (Williamson), Tyler State Park (Smith), Striker (Rusk), Caddo Marion and Harrison), and Burke-Crenshaw (Harris).	3	14-18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Bastrop (Bastrop), Fayette County (Fayette), Houston County (Houston), Nacogdoches (Nacogdoches), Fork (Wood, Rains and Hopkins), Monticello (Titus), Mill Creek (Van Zandt), Joe Pool (Dallas, Ellis, and Tarrant) and Walter E. Long (Travis).	3	14-21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than one bass over 21 inches in length may be retained each day.
Bass: smallmouth.			
Lake O. H. Ivie (Coleman, Concho, and Runnels).	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12-15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: striped, its hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5 (in aggregate)	No Limit	No more than 2 over 30 inches in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in aggregate)	No Limit	No more than 1 over 20 inches in length may be retained each day. Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Bass, white.			
Lakes Conroe (Montgomery and Walker), Livingston (Polk, San Jacinto, Trinity and Walker), Limestone (Leon, Limestone, and Robertson), Palestine and its tributaries (Anderson, Cherokee, Henderson and Smith) including the Neches River (Smith, Henderson, and Van Zandt), Kickapoo Creek (Henderson), and Flat Creek (Henderson), and Somerville and its tributaries (Burleson, Lee, and Washington) including Yegua Creek (Burleson and Washington), East Yegua Creek (Burleson, Lee, and Milam), and Middle Yegua Creek (Burleson and Washington), The West Fork San Jacinto River (Walker), Trinity River below lock and dam near Highway 7 (Leon, Houston, Trinity and Walker), and Navasota River between Lakes Limestone and Mexia (Limestone).	25	12	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Catfish: blue.			
Lakes E. V. Spence (Coke) and Fort Phantom Hill (Taylor)	5	18	
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lakes Canyon (Comal), Choke Canyon (Live Oak and McMullen), Conroe (Montgomery and Walker), Cooper (Delta and Hopkins), Fairfield (Freestone), Lewisville (Denton), Meredith (Hutchinson, Moore and Potter), O. H. Ivie (Coleman, Concho, and Runnels), Palestine (Cherokee, Anderson, Henderson and Smith), and Whitney (Hill, Bosque and Johnson).	15 (in aggregate)	14	
Lake Bastrop (Bastrop), Bright (Williamson), Burke-Crenshaw (Harris), and in reservoirs lying totally within the boundaries of a state park.	5 (in aggregate)	14	
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in aggregate)	9	The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Designated urban lakes (see §65.3 of this title relating to Definitions for listing of designated urban lakes).	3 (in aggregate)	12	
Crappie: black and white crappie, their hybrids and subspecies.			
Lake Toledo Bend (Newton, Sabine, and Shelby).	<u>50</u> <u>(aggregate)</u>	<u>No</u> <u>Limit</u>	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in aggregate)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Choke Canyon (Live Oak and McMullen).	15	10	
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Tradinghouse Creek (McLennan).	3	20	No maximum size limit.
Shad: gizzard and threadfin shad.			
The Trinity River below Lake Livingston between Polk and San Jacinto Counties.	500 (in aggregate)	No Limit	Possession Limit 1,000 in aggregate.
Sunfish: Bluegill, redear, green, warmouth, and longear sunfish, their hybrids and subspecies.			
Purtis Creek State Park Lake (Kenderson and Van Zandt).	25 (in aggregate)	7	

(ii) (No change.)

(5) (No change.)

(c)-(e) (No change.)

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325895

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

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### Subchapter A. Statewide Hunting and Fishing

#### • 31 TAC §65.26, §65.30

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

The Texas Parks and Wildlife Commission proposes to repeal existing §65.26 and §65.30 concerning the Statewide Hunting and Fishing Proclamation. Section 65.26 is being retitled and completely rewritten to conform with and complement §65.30. Section 65.30 expired under its own conditions February 28, 1993. Repeal of the existing, but expired §65.30 will permit adoption of new rules in this section that are similar in content relating to the white-tailed deer herd management

program. The new §65.26 and §65.30 will be proposed simultaneously in another submission.

Robin Riechers, staff economist, has determined that the first five-years the repeals are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the repeals.

Ms. Riechers also has determined that for each of the first five-years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals as proposed will permit adoption of new rules concerning wildlife habitat and harvest annual recommendations and the white-tailed deer herd management program. There will be no effect on small businesses. It is anticipated there will be no fiscal implications to persons who are required to comply with the repeals as proposed.

The department has not filed a local employ-

ment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A, as the department has concluded that the repeals will have no local employment impact.

Comments on the repeals as proposed may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin Texas 78744; (512) 389-4974 or 1 (800) 792-1112, extension 4974.

The repeals are proposed under Texas Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983) which provides the Texas Parks and Wildlife Commission with authority to establish wildlife resource regulations for this state.

#### *§65.26. Deer Management Plan and Required Permits.*

#### *§65.30. White-tailed Deer Herd Management Tag.*

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325896

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

### Subchapter O. Late Season Migratory Game Bird Proclamation

#### • 31 TAC §§65.331, 65.333-65.335

The Texas Parks and Wildlife Commission proposes amendments to §§65.331 and 65.333-65.335, concerning the Late Season Migratory Game Bird Proclamation. The amendments clarify wording for definitions, shooting hours, and possession limit rules, adjust season dates for ducks, geese, and cranes, increase the bag limit for geese in West Texas, and provide for one canvasback in the duck bag-limit. The proposed amendments are based upon studies which track trends in relative abundance of the various migratory game bird species. The proposed amendments regulate the taking of migratory game birds consistent with their populations, so as to maintain viable populations for future seasons.

Robin Riechers, staff economist, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Riechers also has determined that for each year of the first five years the rules are

in effect the public benefit anticipated as a result of enforcing the rules will permit taking migratory game bird species consistent with their populations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. The department has not filed a local employment impact statement with the Texas Employment Commission in compliance with Section 4A of the Administrative Procedure and Texas Register Act, as this agency has determined that the rules as proposed will not impact local economics.

Comments on the proposal may be submitted to Brian Sullivan, Waterfowl Program Leader, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; telephone (512) 389-8012 or 1-800-792-1112, extension 8012.

The amendments are proposed under the Texas Parks and Wildlife Code, Chapter 64, Subchapter C, which provides the Texas Parks and Wildlife Commission with the authority to regulate seasons, means, methods, and devices for taking and possessing migratory game bird wildlife resources:

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

*Baiting*—The placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat, or other grain, salt, or other feed so as to constitute for migratory game [such] birds a lure, attraction, or enticement to, on, over areas when hunters are attempting to take such birds. [them; and "baited area"]

*Baited area*—["means] Any area where shelled, shucked, or unshucked corn, wheat, or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and the area shall remain a baited area for ten days following complete removal of all such corn, wheat, or other grain, salt, or other feed.

#### *§65.333. Open Seasons.*

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

(c) Statewide hunting hours, including falconry, for all migratory game birds listed herein are one-half hour before sunrise to sunset.

(1) Ducks, coots, and mergansers: [Open Seasons].

(A) High Plains Mallard Management Unit: November 20, 1993 [21, 1992]-January 9, 1994 [10, 1993 from one-half hour before sunrise to sunset] in that portion of Texas lying west of a line from the international toll bridge at Del Rio, thence northward following U.S. Highway

277 through San Angelo to Abilene, thence along State Highway 351 from Abilene to Albany and U.S. Highway 283 from Albany to Vernon, thence easterly along U.S. Highway 183 to the point of intersection with the Texas-Oklahoma state line in Wilbarger County.

(B) Remainder of the state: November 20 [14]-November 28, 1993 [29, 1992] and December 18, 1993 [26, 1992]-January 16, 1994 [17, 1993, from one-half hour before sunrise to sunset].

[(C) Special provision: The season is closed on canvasbacks.]

(2) Geese.

(A) West of U.S. Highway 81: October 16, 1993 [17, 1992] -January 30, 1994 [31, 1993].

(B) East of U.S. Highway 81: Light goose species (snow, blue, and Ross'), November 6, 1993 [October 31, 1992]-February 13, 1994 [14, 1993]. Dark goose species (Canada, black-brant and white-fronted) November 6, 1993 [October 31, 1992]-January 16, 1994 [10, 1993]. Canada geese only January 17-23, 1994 [11-17, 1993]. During the period January 11-17, 1993, the Canada goose bag limit is two per day. Possession limit is twice the daily bag limit].

[(C) Shooting hours statewide: one-half hour before sunrise to sunset.]

(C)[(D)] The season is closed on Canada geese in Anderson and Henderson Counties.

(3) Sandhill cranes.

(A) Zone A: November 13, 1993-February 13, 1994 [Second Saturday in November for 93 consecutive days from one-half hour before sunrise to sunset] in that portion of Texas lying west of a line beginning at the international toll bridge at Laredo, thence northeast along U.S. Highway 81 to its junction with Interstate Highway 35 in Laredo, thence north along Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio, thence northwest along Interstate Highway 10 to its junction with U. S. Highway 83 at Junction, thence north along U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line.

(B) Zone B: December 4, 1993-February 13, 1994 [First Saturday in

December for 72 consecutive days from one-half hour before sunrise to sunset] in that portion of Texas lying within boundaries beginning at the junction on Interstate Highway 35 and the Texas-Oklahoma state line, thence south along Interstate Highway 35 (following Interstate Highway 35 West through Fort Worth) to its junction with Interstate Highway 10 in San Antonio thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line, thence eastward along the Texas-Oklahoma state line to Interstate Highway 35.

(C) Zone C: January 8, 1994-February 13, 1994 [First Saturday in January for 37 consecutive days from one-half hour before sunrise to sunset] in that portion of Texas lying within boundaries beginning at the international toll bridge at Brownsville, thence north and east along U.S. Highway 77 to its junction with U.S. Highway 87 at Victoria, thence eastward along U.S. Highway 87 to its junction with Farm Road 616 at Placedo, thence north and east along Farm Road 616 to its junction with State Highway 35, thence north and east along State Highway 35 to its junction with State Highway 6 at Alvin, thence west and north along state Highway 6 to its junction with U.S. Highway 290, thence westward along U.S. Highway 290, to its junction with Interstate Highway 35 at Austin, thence south along Interstate Highway 35 to its junction with U.S. Highway 81 in Laredo, thence southwest along U.S. Highway 81 to the international toll bridge in Laredo, thence south and east along the U.S.-Mexico international boundary to its junction with the U.S. Highway 77 international toll bridge at Brownsville.

(D) (No change.)

(4) Common snipe (Wilson's snipe or jacksnipe). October 23, 1993-February 6, 1994 [Fourth Saturday in October for 107 consecutive days from one-half hour before sunrise to sunset].

(5) Woodcock. November 27, 1993-January 30, 1994 [28 for 65 consecutive days from one-half hour before sunrise to sunset].

#### §65.334. Bag and Possession Limits.

(a) (No change.)

(b) Except where specified otherwise, the possession limit for all species in these rules shall be twice the daily bag limit.

(c)[(b)] The daily bag [and posses-

sion] limits, except falconry, are as follows:

(1) Ducks, coots, and mergansers.

(A) Ducks: Except as specifically provided for Mallards in the High Plains Mallard Management Unit, the daily bag limit, is the aggregate of three ducks which may include no more than two mallards (no more than one of which may be a female mallard), one mottled duck, one pintail, one canvasback, one redhead, and [or] two wood ducks. In the High Plains Mallard Management Unit, the daily bag limit is the aggregate of three ducks as provided in this section, except that it may include three mallards not to include more than one female mallard. [Possession limit: possession limit shall be twice the daily bag limit.]

(B) Coots: the daily bag limit [on coots] is 15. [The possession limit is 30.]

(C) Mergansers: the daily bag limit is five, which may include no more than one hooded merganser. [Possession limit: possession limit shall be twice the daily bag limit.]

(2) Geese.

(A) West of U.S. Highway 81: the daily bag limit is eight [five], not to include more than five light geese (snow, blue, and Ross') and three dark geese [three] (Canada or white-fronted geese or black brant) [in the aggregate. [Possession limit is 10, not to include more than six Canada or white-fronted geese or black brant in the aggregate].

(B) East of U.S. Highway 81: the daily bag limit for light geese (snow, blue, and Ross') is ten, and the daily bag limit for dark geese is one Canada goose or black brant, and one white-fronted goose. During the period January 17-23, 1994, the daily bag limit for Canada geese is two.

Possession limit is twice the daily bag limit.]

(3) Sandhill cranes. The daily bag limit is three [; three; possession limit: six].

(4) Common snipe (Wilson's snipe or jacksnipe). The daily bag limit is eight[: eight; possession limit: 16].

(5) Woodcock. The daily bag limit is five[: five; possession limit: 10].

(d)[(c)] No person may possess migratory game birds on the opening day of the season in excess of the lawful daily bag limit.

(e)[(d)] No person may possess freshly killed migratory game birds during the closed season.

(f)[(e)] No person shall kill or wound a migratory game bird without making a reasonable effort to retrieve it.

(g)[(g)] Every migratory game bird wounded by hunting and retrieved by the hunter shall be immediately killed and become a part of the bag limit.

#### §65.335. Extended Falconry Season.

(a) (No change.)

(b) It is lawful to take migratory game birds by means of falconry during the open seasons prescribed in §65.333 of this title (relating to Open Seasons) and during the following Extended Falconry Seasons:

(1) Ducks, coots, and mergansers.

(A) High Plains Mallard Management Unit. (See description §65.333(c)[(b)](1)(A)). January 10, 1994 [11, 1993]-February 25, 1994 [26, 1993 from one-half hour before sunrise to sunset].

(B) Remainder of the state. November 29, 1993 [30, 1992] -December 17, 1993 [25, 1992] and January 17, 1994 [18, 1993] -February 25, 1994 [19, 1993 from one-half hour before sunrise to sunset].

(2) Woodcock. January 31, 1994 [February 1, 1993]-February 25, 1994 [26, 1993 from one-half hour before sunrise to sunset].

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

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325844

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Earliest possible date of adoption: August 23, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

## Subchapter P. Alligators

### • 31 TAC §65.351

The Texas Parks and Wildlife Commission proposes an amendment to §65.351 concerning revocation and suspension of licenses or permits under the authority to Texas Parks and Wildlife Code, Subchapter F, Chapter 12 concerning the disposal of alli-



gators, alligator hides, alligator eggs or alligator parts seized by a game warden. The commission is authorized by proclamation as considered necessary to manage alligator resources or to protect human health or property.

The proposed change conforms to legislation (in Chapter 65 Parks and Wildlife Code) adopted by the 73rd Texas Legislature. The proposed regulation that differs significantly from existing alligator regulations are summarized as follows.

The amendment to §65.351 provides for revocation and suspension of licenses or permits in accordance with Subchapter F, Chapter 12, Texas Parks and Wildlife Code.

Robin Riechers, staff economist, has determined that during the first five-year period that the proposed amendments will be in effect, there will be minimal fiscal implications on units of local and state government as a result of enforcing or administering the amendments. There will be fiscal implication on small business as a result of compliance with proposed amendments. These costs cannot be quantified at this time.

Don Wilson, Program Administrator, Fisheries and Wildlife Division, has determined that for each year of the first five years the proposed amendments are in effect there will be improved compliance with provisions of the Alligator Regulations; ensure the health and maintenance of alligators and allow for stricter controls of facilities; and reduce costs to the department in holding seized alligators or parts pending outcome of case filed by game wardens.

There will be economic costs to individual alligator farmers who are required to comply with the proposed rules. These costs cannot be quantified at this time.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedures and Texas Register Act, §4A, as this agency has determined that the rules as proposed may have minimal impact on local economics. A response from the Texas Employment Commission has not been received.

Comments on the proposed amendments may be submitted to Don Wilson, Program Administrator, Fisheries and Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4410 or 1 (800) 792-4410.

The amendment is proposed under the Texas Parks and Wildlife Code, Chapter 65, which provides the Parks and Wildlife Commission with the authority to regulate taking, possession, propagation, transportation, exportation, importation, sale and offering for sale of alligators, hides, eggs, or parts of alligators as considered necessary to manage the species.

*§65.351. Application.* Except for special permits issued under the Texas Parks and Wildlife Code, Chapter 43, or contracts for the removal of reptiles entered into under the Texas Parks and Wildlife Code,

§81.404, or revocation or suspension of licenses or permits under Subchapter F, Chapter 12 of this code, these sections govern the taking, possession, propagation, transportation, exportation, importation, and sale of alligators or parts of alligators to the exclusion of other regulatory and licensing laws in compliance with the Texas Parks and Wildlife Code, §65.002.

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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Paul M. Shinkawa  
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Texas Parks and Wildlife  
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### Subchapter Q. Statewide Fur-bearing Animal and Trapping Proclamation

- 31 TAC §§65.371-65.374, 65.376-65.378, 65.380-65.383, 65.389

The Texas Parks and Wildlife Commission propose amendments to §§65.372, 65.373, 65.376-65.378, 65.380-65.382, and 65.389, new §65.374 and §65.383, concerning the taking, possession, propagation, transportation, exportation, importation, sale and offering for sale of fur-bearing animals or their parts under the authority of the Parks and Wildlife Code, Chapter 71. The Commission is authorized to regulate by proclamation as considered necessary to manage fur-bearing animal resources or to protect human health or property.

Information gathered has shown that the uncontrolled importation and release of fur-bearing animals from the wild poses a potential health threat through the introduction of new strains of rabies and/or parasites to native fur-bearing animals, pets and humans.

The proposed regulations that differ significantly from the existing fur-bearer regulations are summarized as follows:

The amendments to §65.372 redefines resident to conform with statutory language.

The amendment to §65.373 reflects increased fees for trappers, retail fur buyers, wholesale fur dealers and fur-bearing animal propagation licenses, as adopted by the Commission during the May, 1991, Commission meeting, and deletes statutory definitions.

New §65.374 provides that a person possessing a hunting license may take a fur-bearing animal if the taking is not for sale, barter, or exchange and the take does not exceed the daily bag limit or possession limit established by the Commission.

The amendment to §65.376 prohibits import of live fur-bearing animals taken from the wild, authorizes the import of offspring of fur-bearing animals derived from captive-reared stock and prohibits the commingling of fur-bearing animals held under a propagation license with a permit issued for scientific, zoological, or rehabilitation purposes.

The amendment to §65.378 requires that fur-bearing animals are to be maintained in approved facilities at all times and that facilities for fur-bearers be separate from facilities maintained under any other permit and provides bag and possession limits for licensed hunters.

The amendment to §65.380 provides that only licensed trappers, fur-bearer propagators, retail fur-bearers and whole-sale fur dealers may sell pelts of fur-bearing animals and that only licensed retail fur buyers and wholesale fur dealers may purchase pelts of fur-bearing animals.

The amendment to §65.381 would require fur-bearing animal propagators to report the number and kinds of fur-bearers purchased, whom the purchase was made from, and to report whom sales are made to.

The amendment to §65.382 requires a completed application for import of live fur-bearing animals and requires that the applicant furnish a certification from the State Veterinarian that the area in which the facility is located has been rabies-free for the previous 12 months; that the imported fur-bearing animals are offsprings of captive-reared stock; a health certificate showing three negative fecal flotations on three separate days; and requires shipments to be accompanied by official interstate health certificates. Also, animals held by propagators could not be released into the wild. New §65.383 provides the conditions under which a license or permit may be suspended and revoked.

The amendment to §65.389 provides that penalties for violation of these rules are prescribed by Texas Parks and Wildlife Code, §71.015.

Robin Riechers, staff economist, has determined that during the first five-year period that the proposed amendment will be in effect, there will be minimal fiscal implication to units of local and state governments as a result of enforcing and administering the amendment.

Bill Brownlee, permit coordinator, Fisheries and Wildlife Division, has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be improved control on the importation of live fur-bearing animals, thereby reducing the potential threat for introduction of diseases and/or parasites which could adversely affect fur-bearing animals in the wild, domestic animals, and human health. Provision of facility requirements will insure restrictions on public access, thereby providing public benefits in the form of protection for the public. There will be an effect on small businesses; however, the impact cannot be quantified at this time. There will be economic costs to individual fur-bearing animal propagators who are required

to comply with the proposed rules. These costs cannot be quantified at this time.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedures and Texas Register Act, §4A, as this agency has determined that the rules as proposed may have a minimal impact on local economics. The department has not yet received a reply from the Texas Employment Commission.

Comments on the proposed amendments may be submitted to Bill Brownlee, Permit Coordinator, Fisheries and Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4700 or 1-(800) 792-4700.

The amendments and new sections are proposed under Texas Parks and Wildlife Code, Chapter 71, which provides the Texas Parks and Wildlife Commission with the authority to adopt regulations for the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property.

**§65.371. Application.** These sections apply to fur-bearing animals statewide, except those affected by the Texas Parks and Wildlife Code, §81.404 (relating to contract removal of fur-bearing animals on management areas), Chapter 43, Subchapter C (relating to scientific permits), and §§229.021, 334.041, and 350.021 (relating to the sale of certain live animals in Kaufman, Van Zandt, and Wood counties) are not affected by this subchapter.

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

**Carcass**—The body of a dead fur-bearing animal, with or without the hide attached (Texas Parks and Wildlife Code, §71.001(9)).

**Commission**—The Texas Parks and Wildlife Commission.

**Department**—The Texas Parks and Wildlife Department or a specifically authorized employee of the department.

[Depredation—The loss of or damage to agricultural crops, livestock, poultry, wildlife, or personal property, Texas Parks and Wildlife Code, §71.001(10).]

[Fur-bearing animal—Wild beaver, otter, mink, ring-tailed cat, badger, skunk, raccoon, muskrat, opossum, fox, weasel, nutria, or civet cat, Texas Parks and Wildlife Code, §71.001(1).]

**Fur-bearing animal propagator**—A person who takes or possesses a living fur-bearing animal and holds it for the purpose of propagation or sale (Texas Parks and Wildlife Code, §71.001(13)).

**Nonresident**—Any person applying for a trapper's license other than a resident (Texas Parks and Wildlife Code, §71.001(6)).

**Nuisance**—An offensive, annoying, or unpleasant situation, event, or act involving fur-bearing animals that may negatively affect human health or safety.

**Pelt**—The untanned, green or dried hide or skin of a fur-bearing animal, whether or not the hide or skin is attached to the carcass (Texas Parks and Wildlife Code, §71.001(11)).

**Place of business**—A place where fur-bearing animals or their pelts are sold, received, transported, possessed, or purchased, and includes a vehicle used by a trapper, retail fur buyer, wholesale fur dealer, or fur-bearing animal propagator (Texas Parks and Wildlife Code, §71.001(12)).

**Possess**—The act of having control of a fur-bearing animal but does not include take.

**Resident**—An individual [A person] who has resided continuously in this state for more than six months immediately before applying [an application] for a license issued under this subchapter, the Texas Parks and Wildlife Code, Chapter 71 [is made, Texas Parks and Wildlife Code, §71.001(5)].

**Retail fur buyer**—A person who purchases a fur-bearing animal or the pelt of a fur-bearing animal of this state from trappers only (Texas Parks and Wildlife Code, §71.001(3)).

**Sale**—Includes barter and other transfers of ownership for consideration (Texas Parks and Wildlife Code, §71.001(7)).

**Take**—The act of snaring, trapping, shooting, killing, or capturing by any means and includes an attempt to take (Texas Parks and Wildlife Code, §71.001(8)).

**Trapper**—A person who takes a fur-bearing animal or the pelt of a fur-bearing animal (Texas Parks and Wildlife Code, §71.001(2)).

**Wholesale fur dealer**—A person who purchases for himself or for another person a fur-bearing animal or the pelt of a fur-bearing animal of this state from a trapper, retail fur buyer, a fur-bearing animal propagator, or another wholesale fur dealer (Texas Parks and Wildlife Code, §71.001(4)).

#### §65.373. License Fees.

(a) The fees for licenses required for activities authorized by this subchapter are prescribed under the provisions of Texas Parks and Wildlife Code, Chapter 71, and are:

(1) \$15 [10.75] for a resident trapper's license;

(2) \$250 [200.75] for a nonresident trapper's license;

(3) \$75 [50.75] for a resident retail fur buyer's license;

(4) \$300 [200.75] for a nonresident retail fur buyer's license;

(5) \$150 [100.75] for a resident wholesale fur dealer's license;

(6) \$500 [400.75] for a nonresident wholesale fur dealer's license; and

(7) \$75 [50.75] for a fur-bearing animal propagator's license.

#### §65.374. Licensed Requirement.

(a) Except as provided by subsection (b) of this section, no person may take a fur-bearing animal or a pelt in this state unless the person has acquired and possesses a trapper's license.

(b) A person who possesses a hunting license and is engaged in a lawful hunting activity for any species other than fur-bearing animals may take and possess a fur-bearing animal if:

(1) neither the fur-bearing animal nor any part of that animal is taken for the purpose of sale, barter, or exchange; and

(2) the number of fur-bearing animals taken does not exceed the daily bag limit or possession limit set by commission regulation.

#### §65.376. General Rules.

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

(c) Except for nutria, fur-bearing animals or pelts, taken under subsection (a) or (b) of this section may not be retained or possessed by any one at any time except during the open season and possession periods as provided by this subchapter provided that depredating and nuisance live fur-bearing animals taken under subsection (b) of this section may be possessed only during transport for release under provisions of §65.382(e)[(c)] of this title (relating to Importation and Release of Fur-Bearing Animals or Their Pelts).

(d)-(g) (No change.)

(h) This subchapter shall not apply to the Texas Animal Damage Control Program (U.S. Department of Agriculture [U.S. Fish and Wildlife Service]—Texas Rodent and Predatory Animal Control Service—Texas Animal Damage Control Association) in the fulfillment of their responsibility as mandated by state laws. All animals handled pursuant to this subsection shall be accounted for in a report from the U.S. Department of Agriculture [U.S. Fish and Wildlife Service] by January 30 following the year of handling. The report shall include the number of individual animals handled by species, and county of take. More inclusive reports may be substi-

tuted in the event they duplicate the information required by this subsection.

(i) (No change.)

(j) Importation of live raccoons is prohibited.

(1) No person may import into this state or possess after importation a live raccoon.

(2) This section does not prohibit a common carrier, circus, carnival, or medical research institution from transporting a live raccoon through this state.

(k) Importation of other live fur-bearing animals.

(1) No person may import into this state or possess after importation a live fur-bearing animal taken from the wild.

(2) Offsprings of fur-bearing animals, other than raccoon, derived from captive-reared stock that are maintained in facilities licensed by the state or country of origin may be imported into this state and possessed for propagation purposes or sale in accordance with §65.382 of this title (relating to importation of fur-bearing animals or their pelts).

(3) This section does not prohibit a common carrier, circus, carnival,

or medical research institution from transporting live fur-bearing animals taken from the wild through this state.

(l) Fur-bearing animals obtained from the wild under the authority of a permit issued pursuant to the Parks and Wildlife Code, Chapter 43, Subchapter C, shall not be commingled with fur-bearing animals held under a fur-bearing animal propagation license.

*§65.377. Open Seasons.*

(a) No person may retain or possess a fur-bearing animal or the pelt of a fur-bearing animal except during the open season as provided in this section, or as specifically provided elsewhere.

(b) Open seasons are given by their opening and closing dates. All dates are inclusive.

(c) The open seasons are:

(1) Muskrat. November 15 of one year through March 15 of the following year.

(2) Nutria. January 1 through December 31.

(3) Beaver, otter, mink, ring-tailed cat, badger, skunk, fox, [weasel,] opossum, raccoon, and civet cat. December 1 of one year through January 31 of the following year.

(d) A person holding a fur-bearing animal propagation license may take fur-bearing animals alive only during the open season for the taking of fur-bearing animal species as provided in this section.

*§65.378. Possession of Fur-bearing Animals or Their Pelts.*

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

(c) No person other than the holder of a fur-bearing animal propagation license may possess a live fur-bearing animal at any time except as provided in this subchapter and such propagation license may be issued each license year only after holding facilities are examined by a representative of the department and are found to adequately provide at all times [a] fresh water [supply at all times,] ; sanitary bedding area, shelter from heat and inclement weather, and the following minimum space and height specifications are met for each animal confined.

SPECIES	Minimum Specifications	
	Height (inches)	Space (sq. ft.)
Badger	15	6-1/2
Beaver	20	7-1/2
Fox, Gray	18	6
Fox, Kit	15	5
Fox, Red	18	6
Fox, Swift	15	4-1/2
Mink	12	3-1/2
Muskrat	12	2-1/2
Nutria	15	5
Opossum	12	4-1/2
Otter, River	18	7
Raccoon	18	6
Ringtail	15	4
Skunk, Spotted (Civet)	12	3
Skunk, Other	15	4
Weasel	9	3

Minimum requirements shall be met for all fur-bearing animals held at any time, except that young may be confined with their parents or with siblings until 120 days of age without meeting minimal floor space requirements for other than that necessary for one adult animal and animals may be confined for pelting purposes from 45 days prior to the open fur season until 20 days after the open season for each species without meeting minimum floor space requirements.

(d) Live fur-bearing animals shall be maintained at all times in facilities approved by the department.

(e) Facilities for fur-bearing animals held under a propagation permit shall be a minimum of 1,000 feet from facilities for holding fur-bearing animals

under a permit issued under the Parks and Wildlife Code, Chapter 43, Subchapter C. This restriction may be waived by the department on a case-by-case basis if the department finds the restriction represents an undue hardship on the permit holder due to circumstances beyond his or her control.

(f)[(d)] The possession of more than one undried (green) pelt of a fur-bearing animal after the time specified by subsection (e) of this section by a licensed trapper, retail fur buyer, or fur-bearing animal propagator is a violation of this subchapter.

(g)[(e)] The times are as follows:

(1) For undried (green) pelts of all fur-bearing animal except muskrat and nutria:

(A) February 5 of each year by licensed trappers;

(B) February 20 of each year by licensed retail fur buyers and fur-bearing animal propagators; and

(C) no time limitation for wholesale fur dealers.

(2) For undried (green) pelts of muskrat:

(A) March 20 of each year by licensed trappers;

(B) March 30 of each year by licensed retail fur buyers and fur-bearing animal propagators; and

(C) no time limitation for wholesale fur dealers.

(3) For nutria: no restrictions.

(4) For all fur-bearing animals, one animal may be taken per day and one carcass may be possessed outside of the open seasons specified in §65.377(c) of this title (relating to Open Seasons), except that no pelt or carcass of these species may be possessed under this paragraph during the 30 days preceding and the 30 days following the specified open seasons. Fur-bearing animals, pelts, and carcasses possessed under this paragraph may not be sold.

(5) Licensed trappers, retail buyers, and wholesale dealers may possess and market dried pelts year-round.

(6) A person who possesses a valid hunting license and is engaged in a lawful hunting activity for any species other than fur-bearing animals may take one fur-bearing animal per day and possess not more than two fur-bearing animals at any time. Fur-bearing animals, pelts, and carcasses possessed by licensed hunters under the authority of this paragraph may not be sold, bartered, or exchanged.

(h)[(f)] Nothing in this subchapter shall prohibit a taxidermist from possessing for taxidermy purposes a fur-bearing animal or the pelt of a fur-bearing animal lawfully taken or possessed under this subchapter, provided the animal or pelt is labeled with the name and address of the owner of the animal or pelt.

(i)[(g)] Live fur-bearing animals may be taken and possessed for three days or less by persons representing recognized fur-bearer associations or related service organizations for approved instructional or demonstration purposes in conjunction with scheduled meetings of the organizations, provided prior written authorization for such take and possession has been issued by the department at its discretion, based on the activities proposed. Fur-bearing animals thus possessed shall be released to the wild as directed by the department.

#### §65.380. Sale or Purchase of Fur-bearing Animals or Their Pelts.

(a) No person other than licensed trappers, retail fur buyers, wholesale fur dealers, or fur-bearing animal propagators may sell [fur-bearing animals or] the pelts of fur-bearing animals, and no person other than licensed retail fur buyers, or wholesale fur dealers [or fur-bearing animal propagators] may purchase the pelts of fur-bearing animals [or their pelts].

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

#### §65.381. Purchase/Sale Reports.

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

#### §65.382. Importation and Release of Fur-bearing Animals or Their Pelts.

(a) No person may import the pelts of fur-bearing animals [or their pelts] into this state from another country without first obtaining necessary documentation for a declaration for importation of fish or wildlife as required by the United States Fish and Wildlife Service and the U. S. Customs Service.

(b) No person other than a licensed fur-bearing animal propagator who holds a valid fur-bearing animal import permit issued by the department may import live fur-bearing animals into this state from another state or country. [unless a permit has been issued by the department for such importation and a copy of the completed permit accompanies any live fur-bearing animal being imported or is attached to any container used to import live fur-bearing animals. The Department's executive director is authorized to prescribe the necessary information and permit form which is required to import live fur-bearing animals].

(1) A fur-bearing animal import permit may be obtained as follows:

(A) Fur-bearing animal propagator. Upon application to the department on forms provided for fur-bearing animal import:

(i) the application shall show the name, address, and fur-bearing animal propagator's license number of the applicant; the name address and license number of the consignee, species and number to be imported, and purpose for import; and

(ii) each application for a fur-bearing animal import permit shall be accompanied by: a certification from the State Veterinarian that the County, Township, or Parish of the state or county of origin in which the facility is located has been rabies-free for the previous 12 months; a notarized document verifying that each animal to be imported is an offspring from captive-reared stock; an export authorization from state or country of origin (or letter of exemption), and a health certificate which verifies three negative fecal flotation tests on three separate days for each animal within a ten-day period immediately prior to application.

(c) Each shipment must be accompanied by an official interstate health certificate/certificate of veterinary inspection and a copy of the completed import permit issued by the department.

(d)[(c)] Imported live fur-bearing animals except raccoon and live fur-bearing animals previously held in captivity in this state under a fur-bearing animal propagator's permit may not be released into the wild.

(e) Nuisance or depredating fur-bearing animals taken under provisions of §65.376(b) may be possessed during transport for release into the wild with [without] the written consent of the department. Animals released under provision of this subsection must be accounted for in a report filed with the department on or before the tenth day of each [the] month [following the month of release]. The report shall list the species, number captured [and released], date and location of capture, number released, date and location of release, and name and address of person authorized to release.

#### §65.383. Suspension and Revocation of License or Permit.

(a) In addition to any criminal penalty or civil suit, a violation of the Parks and Wildlife Code, Chapter 71, a proclamation of the Commission, or any provision of a permit issued under these rules may result in a suspension or revocation of a license or permit.

(b) Any misrepresentation of fact in an application or report required under these rules is a violation of this subchapter.

§65.389. Penalty. The penalties for a violation of this subchapter are prescribed by Texas Parks and Wildlife Code, §71.015 [and 71. 016].

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-9325893 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

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For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

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## Title 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 9. Property Tax Administration

##### Subchapter A. Practice and Procedure

###### • 34 TAC §9.17

The Comptroller of Public Accounts proposes an amendment to §9.17, concerning notice of public hearing on a tax increase. The amendments are necessary because Senate Bill 7, 73rd Legislature, 1993, abolished county education districts. The abolishment of county education districts returned to school districts the portion of the school district's tax rate formerly levied by the county education district. The notice currently in effect does not reflect the abolishment of county education districts. The rule adopts by reference an amended form for publication of notice of hearing on tax increase. The form gives school districts the option of informing taxpayers that the school district's proposed percentage increase over last year's effective tax rate is partially caused by the abolishment of county education districts and the subsequent exercise by the school districts of their full taxing authority. The amendments do not, however, relieve a school district having a proposed tax rate that exceeds the tax rate limit from holding a hearing on the proposed increase.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. There are no significant fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

This amendment is proposed under the Tax Code, §26.04, which requires the comptroller to prescribe the form for publishing notice of effective and rollback tax rates.

###### §9.17. Notice of Public Hearing on Tax Increase.

(a) A taxing unit that is required by the Tax Code, §26.06, to publish a notice of public hearing on a proposed tax increase shall use the form and wording of Model Form 26.06 in publishing the notice.

(b) Model Form 26.06, as amended August 18, 1993, is adopted by reference. Copies may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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

Issued in Austin, Texas, on July 19, 1993.

TRD-9326059

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: August 23, 1993

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

###### • 34 TAC §9.19

The Comptroller of Public Accounts proposes an amendment to §9.19, concerning notice of effective and rollback tax rates. The amendments are necessary because Senate Bill 7, 73rd Legislature, 1993, required a change in the rollback tax rate calculation for a school district. In addition, Senate Bill 668, 73rd Legislature, requires that a taxing unit transferring departments, functions, or activities to another taxing unit publish certain information in the notice. Likewise, a taxing unit accepting the transfer of these functions must publish certain information. The rule adopts by reference an amended form for publication of notice of effective and rollback tax rates. The form reflects the change in a school district's rollback tax rate calculation and provides the information required of taxing units transferring departments, functions, or activities.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the proposed rule will be in effect there will be no significant revenue impact on the state or local government as a result of enforcing the rule.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding school districts' and taxing units' responsibilities concerning rollback tax rate calculations and publication of certain information. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

This amendment is proposed under the Tax Code, §26.04, which requires the comptroller to prescribe the form for publishing notice of effective and rollback tax rates.

###### §9.19. Notice of Effective and Rollback Tax Rates.

(a) A taxing unit shall use the form and wording of Model Form 26.04 in publishing the notice of effective tax rate and other information required to be published by the Tax Code, §26.04(e). A county may modify the model form by inserting additional columns of effective and rollback rate calculations for each type of tax the county levies. A form so modified must also state the total effective and rollback tax rates for the county.

(b) The type-size used in the notice may not be smaller than eight points.

(c) Notice for taxing units may be combined, provided each meets the requirements of subsection (b) of this section.

(d) Model Form 26.04 amended August 1, 1993, is adopted by reference.

(e) Copies may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9326028

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: August 23, 1993

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 48. Community Care for Aged and Disabled

##### In-Home and Family Support Program

###### • 40 TAC §48.2703

The Texas Department of Human Services (DHS) proposes an amendment to §48.2703, concerning income eligibility, in its Community Care for Aged and Disabled (CCAD) chapter. The purpose of the amendment is to revise the copayment schedule, based on updated state median income figures compiled by the U.S. Department of Health and Human Services.

Burton F. Raiford, commissioner, has determined that for the first five-year period the

rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Raiford also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be public access to the new copayment schedule. There will be no effect on small businesses. There is no antici-

pated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Jim Essler at (512) 450-3223 in DHS's Community Care Section E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The amendment is proposed under the Human Resources Code, Title 2 Chapters 22 and 35, which provides the department with

the authority to administer public assistance and support services for persons with disabilities programs.

*§48.2703. Income Eligibility.*

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

(d) Copayment are figured according to the following table:

In-home and Family Support Program  
Income Copayment Schedule

Percent (%) Copay:		10%	20%	30%	40%	50%
Family Size	Median Income	105% of Median Income	110% of Median Income	115% of Median Income	120% of Median Income	125% of Median Income
1	\$19,650	\$20,633	\$21,615	\$22,598	\$23,580	\$24,563
2	25,697	26,982	28,267	29,552	30,836	32,121
3	31,743	33,330	34,917	36,504	38,092	39,679
4	37,789	39,678	41,568	43,457	45,347	47,236
5	43,835	46,027	48,219	50,410	52,602	54,794
6	49,881	52,375	54,869	57,363	59,857	62,351
Maximum Copayment Amount	\$0	\$720	\$1440	\$2160	\$2880	\$3600

Percent (%) Copay:		60%	70%	80%	90%	100%
Family Size		130% of Median Income	135% of Median Income	140% of Median Income	145% of Median Income	150% of Median Income
1		\$25,545	\$26,528	\$27,510	\$28,493	\$29,475
2		33,406	34,691	35,976	37,261	38,546
3		41,266	42,853	44,440	46,027	47,615
4		49,126	51,015	52,905	54,794	56,684
5		56,986	59,177	61,369	63,561	65,753
6		64,845	67,339	69,833	72,327	74,822
Maximum Copayment Amount		\$4320	\$5040	\$5760	\$6480	\$7200

**NOTE:** For families larger than six, add three percentage points for each additional family member to 132% (which is the factor for a family of six) and multiply the new percentage by the State Median Income (SMI) for a family of four. Example: To calculate the SMI for a family of seven: (3% + 132% = 135% X \$37,789 SMI for family of four) = \$51,015.



[In-home and Family Support Program  
[Income Copayment Schedule

[*Percent (%) Copay:		10%	20%	30%	40%	50%
[Family Size	[Median Income	105% of Median	110% of Median	115% of Median	120% of Median	125% of Median ]
[1	\$18,189	\$19,098	\$20,008	\$20,917	\$21,827	\$22,736]
[2	23,785	24,974	26,164	27,353	28,542	29,731]
[3	29,382	30,851	32,320	33,789	35,258	36,728]
[4	34,978	36,727	38,476	40,225	41,974	43,723]
[5	40,574	42,603	44,631	46,660	48,689	50,718]
[6	46,171	48,480	50,788	53,097	55,405	57,714]

[Maximum Copayment Amount      0      \$ 720      \$ 1,440      \$ 2,160      \$ 2,880      \$ 3,600]

[*Percent % Copay:		60%	70%	80%	90%	100%
[Family Size		[130% of Median	135% of Median	140% of Median	145% of Median	150% of Median ]
[1		\$23,646	\$24,555	\$25,465	\$26,374	\$27,284]
[2		30,921	32,110	33,299	34,488	35,678]
[3		38,197	39,666	41,135	42,604	44,073]
[4		45,471	47,220	48,969	50,718	52,467]
[5		52,746	54,775	56,804	58,832	60,861]
[6		60,022	62,331	64,639	66,948	69,257]

[Maximum Copayment Amount      \$ 4,320      \$ 5,040      \$ 5,760      \$ 6,480      \$ 7,200]

[NOTE: For families larger than six, add three percentage points for each additional family member to 132% (which is the factor for a family of six) and multiply the new percentage by the State Median Income (SMI) for a family of four.  
Example: A family of seven (one additional member): 3% + 132% = 135% X \$34,978 (SMI for family of four) = \$47,220.]

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325805

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

Proposed date of adoption: October 1, 1993

For further information, please call: (512)  
450-3785

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### Texas Department of Insurance Exempt Filing

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

*(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5.96 and 5.97.*

*The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)*

The State Board of Insurance, at a Board meeting scheduled for 9:00 a.m. August 11, 1993 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a forms filing by the Texas Workers' Compensation Commission (Commission) for a bond form entitled "Surety Bond, Form SI-210" and two endorsements entitled "Surety Bond Increase/Decrease Rider, Form SI-215" and "Surety Bond Name Change Rider, Form SI-216".

The proposed new forms are for the Commission's new Self-Insurance Program as authorized by the Texas Workers' Compensation Act, Texas Civil Statutes, Article 8308. The Commission's §114.4, (a) requires the applicant (self-insured employer) to provide security for incurred liabilities for workers' compensation. A method of providing such a security is a surety bond which names the director of the Commission as payee.

Copies of the full text of the proposed forms for the Texas Workers' Compensation Com-

mission are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number O-0793-15)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325975

Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

For further information, please call: (512)  
463-6328

The State Board of Insurance, at a Board hearing scheduled for 9:00 a.m. August 23, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider as a continuation of Docket Number 1996 an amendment to the petition filed by the staff of the Workers' Compensation Division proposing a revision to the experience rating plan.

The amendment as proposed by staff amends Texas Experience Rating Plan Manual, Section IV, Application of Experience Modification by adding exception (c) to (1), which indicates that the Texas Department of Insurance (TDI) will calculate a workers' compensation experience modifier for each insured meeting the premium eligibility requirements for experience rating. The proposed amendment provides that a modifier

calculated by TDI for an insured for a specific period may be reduced by an insurance company for use in calculating that insured's workers' compensation premium for the applicable period. Reasons for reducing the experience modifier include but are not limited to improved loss ratios and/or improved safety programs. Once reduced, the lower modifier shall be applied to all premium due for the entire applicable policy period. The experience modifier calculated by TDI will be the modifier used to meet any applicable statutory requirements.

A copy of the amendment containing the full text of the proposed amendment is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the amendment, please contact Angie Arizpe (512) 322-4147, refer to Reference Number W-0493-07.

The staff and the State Board of Insurance request that written comments to this proposed amendment be submitted to the Office of the Chief Clerk prior to the public hearing on August 23, 1993. Public testimony at the public hearing on August 23, 1993, is also invited.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

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

Issued in Austin, Texas, on July 19, 1993.

TRD-9326029

Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

# Withdrawn Sections

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— An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## TITLE 22. EXAMINING BOARDS

### Part XXIX. Texas Board of Professional Land Surveying

#### Chapter 663. Standards of Responsibility and Rules of Conduct

##### Professional and Technical Standards

- 22 TAC §663.18

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91.24(b), the proposed amendment to §663.18, submitted by the Texas Board of Professional Land Surveying has been automatically withdrawn, effective July 15, 1993. The §663.18 as proposed appeared in the January 15, 1993 issue of the *Texas Register* (18 TexReg 294).

TRD-9325981





Name: Steve Roy  
Grade: 12  
School: Plano East Senior High, Plano ISD



Name: Carie Clouse  
Grade: 12  
School: Plano East Senior High, Plano 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 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 113. Central Purchasing Division

##### • 1 TAC §§113.1-113.15, 113.17

(Editor's note: In the April 6, 1993, issue of the *Texas Register* (18 *TexReg* 2297), the General Services Commission adopted §§113.1-113.18, regarding purchasing. The General Services Commission inadvertently left out the submission to adopt the repeal of §§113.1-113.15, and 113.17. )

The General Services Commission adopts the repeal of §§113.1-113.15, and 113.17 concerning the central purchasing division, without changes to the proposed text as published in the December 15, 1992, issue of the *Texas Register* (17 *TexReg* 8785).

The repeals will benefit the public through simplified regulations.

The repeals eliminate unnecessary, and obsolete language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, §3.01, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325965 Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: August 6, 1993

Proposal publication date: December 15, 1992

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



## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 5. Quarantines

##### • 4 TAC §5.63

The Texas Department of Agriculture adopts an amendment to §5.63, without changes to the proposed text as published in the June 15, 1993, issue of the *Texas Register* (18 *TexReg* 3745). The amendment is adopted to prevent the likelihood of the introduction of the sweet potato weevil into Texas. The sweet potato weevil is an insect pest that is dangerous to the interest of horticulture and agriculture in this state. Specifically, the sweet potato weevil poses a serious threat to the sweet potato industry in Texas.

The amendment as adopted adds Merced and Stanislaus Counties in California to the list of regulated areas and prohibits sweet potatoes shipped from these counties into weevil-free areas of Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §71.001, which provides the Texas Department of Agriculture with the authority to adopt rules for quarantines against out-of-state diseases and pests.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325897 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: August 6, 1993

Proposal publication date: June 15, 1993

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



#### Chapter 7. Pesticide Regulations

##### • 4 TAC §§7.1, 7.3-7.8, 7.10-7.12, 7.14, 7.16, 7.18-7.22, 7.24, 7.30, 7.33, 7.34

The Texas Department of Agriculture (the department) adopts amendments to §7.1,

7.3-7.8, 7.10-7.12, 7.14, 7.16, 7.18-7.22, 7.24, 7.30, 7.33, and 7.34. Section 7.22 is adopted with changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 *TexReg* 2503). Sections 7.1, 7.3-7.8, 7.10-7.12, 7.14, 7.16, 7.18-7.21, 7.24, 7.30, 7.33, and 7.34 are adopted without changes and will not be republished. The adopted changes are intended to make the regulations clearer and more consistent with each other and with current federal law, as well as to correct grammatical and citation errors throughout the regulations.

Section 7.10(h)(1) has been changed to correct an error regarding the number of years in the certification period for private applicators. Section 7.22 has been changed in response to comments received from numerous individuals in the applicator business and three associations representing applicators and persons engaged in manufacturing, formulating, and/or distributing agricultural chemicals in Texas. Comments were received in opposition to the proposed change that would require a commercial applicator to provide certain notification regarding the pesticide used if the applicator applies or furnishes the pesticide. The current language requires that the applicator provide such notification only if he or she furnishes the pesticide. Comments generally stated that the current regulation should not be changed and that the proposed change would be cost-prohibitive for the applicator due to the time involved to comply and the unavailability of labels. The department agrees that the requirement that a commercial applicator furnish a complete copy of the label would be onerous and would create an economic hardship on the commercial applicator. The department has deleted the language "applies or" from the proposed change for the purpose of requiring the commercial applicator to provide information on a pesticide applied that was not furnished by the commercial applicator. If an individual furnishes the restricted use or state limited-use pesticide to a commercial applicator, the individual would have to be a licensed applicator or dealer, and should be knowledgeable of the label requirements of this section. The department adds new §7.22(a)(3)(B)(i)-(iii) that would give the commercial applicator furnishing the pesticide greater latitude in providing the information required under this section.

The department is authorized to regulate the use of pesticides under the Texas Pesticide Control Act and the Texas Agriculture Code, Chapter 76. The adopted changes are intended to clarify the rights and responsibilities of all entities affected by the Act under the Texas Agriculture Code. The amendment to §7.1 adds and clarifies definitions. The

amendment to §7.3 corrects a citation quote, and clarifies labeling requirements concerning use classification, variation of contents, and identification of manufacturer's lot, batch numbers, or symbols. The amendment to §7.4 clarifies registration requirements of pesticides concerning the location of lot or batch numbers on containers, registration renewals, and late fee assessments. The amendment to §7.5 adds a labeling accompaniment requirement for custom mixes. The amendment to §7.6 clarifies the requirements for the registration of a pesticide for a special local need, and the amendment to §7.7 adds a requirement for providing the location of the application site for experimental-use permits, as well as correcting the amount of the registration fee. The amendment to §7.8 clarifies the requirements for persons who use restricted use or state-limited-use pesticides, and clarifies the records required to be kept by licensed pesticide dealers. The amendment to §7.10 adds the requirement for courses approved by the department to meet applicable federal and state laws; allows Texas Agricultural Extension Service specialists to conduct continuing education courses for commercial and noncommercial applicators; and clarifies the requirements for commercial and noncommercial applicators in obtaining continuing education credits for license renewal. The amendment to this section also reduces the number of continuing education units that a commercial and noncommercial applicator must obtain during the three year recertification period from 20 to 15, while increasing the required credits for integrated pest management strategies from one credit to two credits. The requirement for credit in integrated pest management strategies for private applicators has been increased to two credits during the five-year recertification period from the previous on-credit requirement. The amendment to this section further clarifies the requirements for applicators that do not obtain the required number of credits within the recertification period and deletes the ability of a commercial or noncommercial applicator licensed in another state to purchase or apply restricted use or state-limited-use pesticides in Texas. The amendment to §7.11 adds the anti-fouling paint subcategory and adds a subsection to allow the department to enter into a memorandum of agreement with other state or federal agencies for reciprocity in the certification of pesticide applicators. The amendment to §7.12 clarifies the testing and licensing requirements for persons wishing to license in the anti-fouling paint subcategory and clarifies the requirement of a test fee for each subcategory. The amendment to §7.14 clarifies the requirements for commercial applicators in providing proof of financial responsibility as a condition of licensing. This clarification includes allowing a general aggregate policy if a split limit policy is not available, requiring chemical drift coverage, and listing of all applicators to be covered by the proof of financial responsibility submitted.

The amendment to §7.16 clarifies the requirements for private applicators to certify and recertify, including correcting the date for private applicators that were issued a certificate on or after January 10, 1989 to obtain a license by December 31, 1994 to continue to

purchase or use a restricted use or state-limited-use pesticide. The previous date of December 31, 1995 had erroneously been stated in the existing rule, thereby allowing six years for the private applicator to relicense instead of the intended five year period. The amendment to §7.18 clarifies the records required to be kept by commercial and noncommercial applicators concerning pesticide use, adds further requirements concerning how these records must be maintained, and clarifies that the requirements of this section do not apply to applications of livestock protection collars or M-44 sodium cyanide. The amendment to §7.19 specifies the type of equipment that is subject to registration by the department. The amendment to §7.20 clarifies the procedures used by the department in investigating complaints. The amendment to §7.21 adds the requirement of a lock on the dispensing device for bulk storage tanks, and provides an alternative to pesticide dealers in maintaining a list of poison control centers. The amendment to §7.22 clarifies what information is to be provided a person in control of the commodity or site treated. The amendment to §7.24 removes the state-limited-use classification of the pesticides chlordane, heptachlor, aldrin, and dieldrin, since uses of these pesticides have been either canceled or prohibited by the Environmental Protection Agency. The amendment to §7.30 lists those pesticides that have met the requirements of this section to allow exemption from the 24-hour reentry interval requirement. The amendment to §7.33 clarifies the state-limited-use requirements for M-44 sodium cyanide. The amendment to §7.34 clarifies the types of activities that require a commercial applicator to be continuously physically present.

Comments generally supporting the amendments were submitted by the Texas Agricultural Experiment Station and the Texas Agricultural Extension Service (both of the Texas A&M University System), the Texas Farm Bureau, the Texas Vegetable Management Association, Crosby County Fuel Association (CCFA), the Texas Agricultural Aviation Association (TAAA), and the Texas Agricultural Chemicals Association (TACA). As noted above, comments in opposition to the proposed changes to §7.22 were submitted by the TAAA, TACA, CCFA and numerous individuals. Comments were also received in support of the anti-fouling category added to §7.12 and concerning the amendment to §7.34.

In addition to the comments noted above, comments were received with which the department does not agree, and therefore did not incorporate into the adopted regulations. A comment was received concerning the appropriateness of the proposed amendment to §7.10 and the addition of compliance with American with Disabilities Act (ADA) and other state and federal laws as a condition of approval for continuing education activities required for recertification. The department believes that as the ultimate issuer of an applicator license for which continuing education activities are required, the department has some responsibility to assure that all such activities are accessible by persons with disabilities covered by the ADA. One com-

ment was received regarding proposed amendments to §7.10(g)(2) and the rationale for the requiring of two integrated pest management (IPM) credits for recertification. The department believes that the requiring of two IPM (integrated pest management) credits is needed because IPM emphasizes preventative methods that provide economical long-term solutions to pest problems. It requires basic ecological knowledge about our farming/ranching systems and an effective decision-making process employing scouting, economic thresholds, cultural and mechanical controls, host plant resistance, biological control, and ecologically sound uses of chemicals. Continuing education is imperative in this process; therefore, because of a prevailing lack of knowledge about IPM, TDA is requiring an additional credit in IPM for recertification.

The amendments are adopted under the authority of the Texas Agriculture Code, §76.003, which authorizes the department to regulate the time and conditions of use of state-limited-use pesticides; §76.004, which authorizes the department to adopt rules for carrying out the provisions of Chapter 76, including rules for labeling requirements for pesticides and devices required to be registered under Chapter 76 and rules providing for the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers; §76.042 which authorizes the department to require information necessary for determining eligibility for registration of a pesticide; §76.044, which authorizes the department to charge a \$100 fee for registration of a pesticide; §76.075, which authorizes the department to prescribe information to be included in dealer records; §76.104, which authorizes the department to adopt rules for application of pesticides; §76.105, which authorizes the department to require licensing for use of restricted-use or state-limited-use pesticides; §76.106, which authorizes the department to establish license-use categories, establish testing requirements for licensing in those categories and charge a nonrefundable testing fee of not more than \$20 for testing in each category; §76.110, which authorizes the department to enter into reciprocal agreements with any other state or federal agency for licensing of pesticide applicators; §76.111, which requires the filing of proof of financial responsibility by commercial pesticide applicators and authorizes the department to establish by rule proof of financial responsibility requirements and procedures; §76.112, which authorizes the department to prescribe by rule the information to be provided by persons applying for a private applicators license; §76.114, which authorizes the department to prescribe by rule the information to be included in records maintained by commercial and noncommercial applicators; §76.115, which authorizes the department to adopt standards for registration and inspection of equipment used for application of pesticides; §76.131, which provides the department with the authority to adopt rules governing the storage and disposal of pesticides and pesticide containers; and §12.024 which provides for the assessment of late fees for renewal of pesticide registrations.

§7.22. *Use Inconsistent with Label Directions.* It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with its label or labeling. Use inconsistent with the label includes, but is not limited to:

(1) applications at sites, rates, concentrations, intervals, or under conditions not specified in the labeled directions, except:

(A) (No change.)

(B) applying a pesticide against any target pest not specified on the label or labeling if the application is to the crop, animal, or site specified on the label or labeling, unless the department or the EPA has determined that the use of the pesticide against other pests would cause an unreasonable, adverse effect on the environment, and has required a statement on the label of the pesticide so stating this determination;

(C) employing any method of application not prohibited by the labeling unless the labeling specifically states that the product may be applied only by the methods specified on the labeling or unless prohibited by law or regulation;

(D) (No change.)

(2) (No change.)

(3) failure to observe reentry intervals, pre-harvest intervals, grazing restrictions, or worker protection requirements.

(A) (No change.)

(B) If a commercial applicator furnishes the pesticide, it is the commercial applicator's responsibility to notify the person in control of the commodity or site treated of the requirements of this section that pertain to reentry intervals, preharvest intervals, grazing restrictions, or worker protection requirements, prior to, or at the time of treatment by:

(i) furnishing a label of the pesticide(s) used;

(ii) providing the requirements in writing; or

(iii) furnishing a copy of the label sections regarding the information required in this subparagraph.

(4) (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 July 13, 1993.

TRD-9325783

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: August 4, 1993

Proposal publication date: April 20, 1993

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

◆ ◆ ◆  
• 4 TAC §7.40

The Texas Department of Agriculture (the department) adopts the repeal of §7.40, without changes to the proposed text as published in the April 23, 1993, issue of the *Texas Register* (18 TexReg 2613).

Chlordane, heptachlor, aldrin and dieldrin are currently listed as state-limited-use pesticides used for the control of subterranean termites. The department in a separate submission has proposed to remove these pesticides from its state-limited-use list, since uses of these pesticides have been either cancelled or prohibited by the Environmental Protection Agency (EPA). The repeal of §7.40 is proposed to be consistent with a proposed amendment to §7.24 and EPA directives, and deletes provisions for use of chlordane, heptachlor, aldrin, and dieldrin in preventing, destroying, or controlling subterranean termites.

Comments generally supporting the repeal were submitted by the Texas Agricultural Experiment Station and the Texas Agricultural Extension Service (both of the Texas A&M University System), the Texas Farm Bureau, the Texas Vegetable Management Association, the Texas Agricultural Aviation Association, and the Texas Agricultural Chemicals Association.

The repeal is adopted under the Texas Agriculture Code, §76.003, which authorizes the department to regulate the time and conditions of use of state-limited-use pesticide; §76.004, which authorizes the department to adopt rules for carrying out the provisions of Chapter 76; and §76.104, which authorizes the department to adopt rules for application of pesticides.

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

Issued in Austin, Texas, on July 13, 1993.

TRD-9325784

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: August 4, 1993

Proposal publication date: April 23, 1993

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

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## TITLE 7. BANKING AND SECURITIES

### Part IV. Texas Savings and Loan Department

#### Chapter 61. Hearings

##### • 7 TAC §61.6

The Texas Savings and Loan Department adopts new §61.6, with changes to the proposed text as published in the May 25, 1993, issue of the *Texas Register* (18 TexReg 3343).

The new rule is adopted to enable the Savings and Loan Department to recover costs incurred in regard to its administrative hearings. The changes made to the proposed text are intended to clarify that these costs may be charged in hearings on applications filed with the Savings and Loan Department.

The new rule will allow the Texas Savings and Loan Department to recover administrative hearings costs regarding applications before the Department, including those related to prosecution of the State's case and the costs charged to the Savings and Loan Department by the State Office of Administrative Hearings.

One comment was received which suggested revising the rule to clarify that it applies only to "applications filed with the commissioner or the Savings and Loan Department" in order to make the rule consistent with statutory authority. Another suggestion by the same commenter was that the rule be revised to clarify the intent of the imposition of direct administrative costs, limiting them to costs incurred by the Department. He expressed concern that in a contested case there could be an attempt to have attorneys fees for a party charged against another party in the hearing.

After considering the comment, the Department concurs in part with the suggestion to clarify that costs charged be related to hearings on applications filed pursuant to the Texas Savings and Loan Act. In regard to the concern that an effort may be made to have attorneys fees for one party charged against another, the Department revised the wording of the rule to limit the charges to direct administrative costs which are incurred by the Department.

The new section is adopted under Texas Civil Statutes, Article 342-114, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same, and under Texas Civil Statutes, Article 852a, §8.01(2), which authorizes the Commissioner and the Finance Commission of Texas to adopt rules relating to fees and procedures for processing, hearing, and deciding applications filed with the Commissioner.

§61.6. *Recovery of Administrative Costs.* The Commissioner may for good cause, after notice and hearing, impose di-

rect administrative costs incurred by the Department related to hearings on applications filed pursuant to the Texas Savings and Loan Act, in addition to other sanctions and cost recoveries provided by law or these rules. Direct administrative costs include, but are not limited to, reasonable attorney's fees and expenses, administrative law judge fees and expenses, investigative costs, witness fees and deposition expenses, witnesses' travel expenses, reasonable fees for professional services of expert witnesses, the reasonable cost of a study, analysis, audit, or other project the Commissioner finds necessary in preparation of the state's case.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325884 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: August 6, 1993

Proposal publication date: May 25, 1993

For further information, please call: (512) 475-1350

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**TITLE 16. ECONOMIC  
REGULATION**  
**Part I. Railroad**  
**Commission of Texas**  
**Chapter 5. Transportation**  
**Division**

*(EDITOR'S NOTE: The 73rd Legislature (1993) transferred the regulation and operation of tow trucks and storage facilities from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas (Texas Civil Statutes, Article 6687-9b), effective September 1, 1993.*

The Texas Register is administratively moving these rules from Title 16, Part IV. Texas Department of Licensing and Regulation, Chapters 79 and 80 to Title 16, Part I. Railroad Commission of Texas, Chapter 5, Subchapters CC and DD. The following table illustrates the rule numbers under Part IV. and the new corresponding numbers under Part I.)

Subchapter CC. Tow Trucks  
*Previously Chapter 80. Tow Trucks*

Old Number	New Number
§80.1	§5.801
§80.10	§5.802
§80.20	§5.803
§80.30	§5.804
§80.40	§5.805
§80.60	§5.806
§80.70	§5.807
§80.80	§5.808
§80.81	§5.809
§80.82	§5.810
§80.90	§5.811
§80.91	§5.812
§80.92	§5.813
§80.93	§5.814
§80.94	§5.815
§80.100	§5.816
§80.101	§5.817
§80.102	§5.818
§80.103	§5.819



**Subchapter DD. Vehicle Storage Facilities**  
*Previously Chapter 79. Vehicle Storage Facilities*

<b>Old Number</b>	<b>New Number</b>
§79.1	§5.901
§79.10	§5.902
§79.20	§5.903
§79.30	§5.904
§79.40	§5.905
§79.70	§5.906
§79.71	§5.907
§79.72	§5.908
§79.73	§5.909
§79.80	§5.910

§79.81	§5.911
§79.90	§5.912
§79.91	§5.913
§79.92	§5.914
§79.93	§5.915
§79.94	§5.916
§79.100	§5.917
§79.101	§5.918
§79.102	§5.919

## Part IV. Texas Department of Licensing and Regulation

*(EDITOR'S NOTE: The 73rd Legislature (1993) transferred the regulation and operation of tow trucks and storage facilities from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas (Texas Civil Statutes, Article 6687-9b), effective September 1, 1993.*

The Texas Register is administratively moving these rules from Title 16, Part IV. Texas Department of Licensing and Regulation, Chapters 79 and 80 to Title 16, Part I. Railroad Commission of Texas, Chapter 5, Subchapters CC and DD. The following table illustrates the rules numbers under Part IV. and the new corresponding numbers under Part I.)

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§80.20	§5.803
§80.30	§5.804
§80.40	§5.805
§80.60	§5.806
§80.70	§5.807
§80.80	§5.808
§80.81	§5.809
§80.82	§5.810
§80.90	§5.811
§80.91	§5.812
§80.92	§5.813
§80.93	§5.814
§80.94	§5.815
§80.100	§5.816
§80.101	§5.817
§80.102	§5.818
§80.103	§5.819

**Subchapter DD. Vehicle Storage Facilities**  
*Previously Chapter 79. Vehicle Storage Facilities*

<b>Old Number</b>	<b>New Number</b>
§79.1	§5.901
§79.10	§5.902
§79.20	§5.903
§79.30	§5.904
§79.40	§5.905
§79.70	§5.906
§79.71	§5.907
§79.72	§5.908
§79.73	§5.909
§79.80	§5.910

§79.81	§5.911
§79.90	§5.912
§79.91	§5.913
§79.92	§5.914
§79.93	§5.915
§79.94	§5.916
§79.100	§5.917
§79.101	§5.918
§79.102	§5.919

# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part II. Texas Parks and Wildlife Department

### Chapter 57. Fisheries

#### Harmful or Potentially Harmful fish, shellfish, and Aquatic Plants

##### • 31 TAC §§57.113, 57.124-57.127

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held May 20, 1993, adopts amendments to §§57.113 and 57.124-57.127, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish, and Aquatic Plants.

Section 57.124 is adopted with changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2522).

The rules as adopted address a number of requests to stock triploid grass carp in public water, to utilize other Asian carp species as biological control agents in situations other than on fish farms, particularly planktivorous species, and to allow the use of Nile tilapia by fish farmers. They have as their factual basis scientific studies and investigations which track population dynamics and species interactions.

The rules as adopted are necessary to appropriately address vegetation control, and water quality control, in public water. The rules also allow Texas fish farmers to use a tilapia species that is environmentally safer to use than the ones currently in use.

The rules are designed to allow the Texas Parks and Wildlife Department to issue permits for triploid grass carp in public water in situations where the Department has determined that there is a legitimate need and when the stocking is thought to have little or no effect on threatened or endangered species, coastal wetlands, or specific management objectives of other important species; conduct research regarding the efficacy of using planktivorous fish, particularly bighead carp and silver carp, to alter water quality in public water; and permit the use of Nile tilapia for use of fish farms, considering the facts that the species is both advantageous economically to the farmers, and less of an environmental threat than species currently in use.

No comments were received from the public prior to the May Commission meeting. Three persons spoke in favor of the proposed regulation changes at the May Commission meeting, none spoke against the proposed changes, and one person expressed concern over a related issue.

A representative from Texas Utilities supports the proposed amendments.

A representative from Texas Aquatic Plant Management Society supports the proposed amendments.

A representative from Texas Aquaculture Association supports the proposed amendments.

The amendments are proposed under the Texas Parks and Wildlife Code, §66.007 and §66.015, or the Agriculture Code, §134.020, which authorizes the department to regulate harmful or potentially harmful exotic fish, shellfish and aquatic plants.

#### §57.124. Triploid Grass Carp; Sale, Purchase.

(a) Triploid grass carp may be sold only to:

(1) a person in possession of a valid Exotic Species Permit authorizing possession of triploid grass carp or;

(2) a persons in possession of a valid Triploid Grass Carp Permit, and only in an amount less than or equal to that number specified in the permit.

(b) A person who holds a valid Triploid Grass Carp Permit may purchase triploid grass carp only from a fish farmer in possession of a valid Exotic Species Permit authorizing possession of triploid grass carp, and only in a an mount less than or equal to that number specified in the Triploid Grass Carp Permit.

(c)-(d) (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 July 16, 1993.

TRD-9325891

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Effective date: August 7, 1993

Proposal publication date: April 20, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

## Part IX. Texas Water Commission

### Chapter 330. Municipal Solid Waste

#### Subchapter X. Forms and Documents

##### • 31 TAC §§330.900-330.909, 330.911-330.918

(Editor's note: In the June 18, 1993, issue of the *Texas Register* (18 TexReg 4023), the Texas Water Commission adopted Chapter 330, regarding Municipal Solid Waste. The Texas Water Commission inadvertently left out the submission to repealed Subchapter X (Forms and Documents), §§330.900-330.909, 330.911-330.918. The effective date of these repeals is October 9, 1993. The

preamble to these repealed rules appears in the June 18, 1993, pages 4023-4030.)

The repeals are adopted under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

§330.900. Instruction for Filing Part A (General Data) and Part B (Technical Data) of an Application for a Permit/Registration to Operate a Municipal Solid Waste Site.

§330.901. Appendix A-Application for a Permit/Registration to Operate a Municipal Solid Waste Site Part A (General Data).

§330.902. Appendix B-Application for a Permit/Registration to Operate a Municipal Solid Waste Site-Part B (Technical Data).

§330.903. Appendix C-Notice of Appointment.

§330.904. Appendix D-Affidavit to the Public.

§330.905. Appendix E-Form for Property Owner Affidavit.

§330.906. Appendix F-Form for Vacuum Truck Manifest.

§330.907. Appendix G-Notification.

§330.908. Appendix H-Registration Form for Transporters of Sludges and Similar Wastes.

§330.909. Appendix I-Annual Summary Report Form for Sludges and Similar Wastes.

§330.911. Notice of Intent to File a Permit Application.

§330.912. Special Permit Application for Stationary Compactors.

§330.913. Special Permit Application for Transporter Route.

§330.914. Special Permit Application for Municipal Route.

§330.915. Establishment Data Sheet.

§330.916. Transporter Trip Ticket.

**§330.917. Hauler Trip Ticket Municipal Transporter Route.**

**§330.918. Hauler Trip Ticket Stationary Compactors.**

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325810      Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: October 9, 1993

Proposal publication date: March 9, 1993

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

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**Title 34. PUBLIC FINANCE**

**Part I. Comptroller of Public Accounts**

**Chapter 3. Tax Administration**

**Subchapter B. Natural Gas Production Tax**

**• 34 TAC §3.20**

The Comptroller of Public Accounts adopts new §3.20, concerning producer's gross cash receipts, with changes to the proposed text as published in the January 15, 1993, issue of the *Texas Register* (18 TexReg 295).

The new section provides guidance as to what is to be included, or excluded, from gross cash receipts when a payment that relates to the price, the quality, or the quantity of the gas is made by the first purchaser of the gas to the producer.

The comptroller has made several changes to the rule in response to comments received. The first change was to include "subject to severance tax" immediately after "producer's gross cash receipts" in subsections (b) and (c). The second change is that subsection (b)(1) now includes "payments made under a contract found not to be an arm's-length contract under subsection (c)(3)." The third change is to subsection (c)(1), which was changed to include "to be produced" immediately following "the sale or purchase of gas." The fourth change is to subsection (f)(1), where "and/or payments found not to be an arm's-length payment under subsection (c)(3)" was added. The following comments on the new rule were received.

El Paso Natural Gas Company supports the rule except for the sections relating to payments for price buydowns. El Paso made several suggestions that they feel will clarify the rule.

El Paso recommends that "subject to severance tax" be added to subsection (b).

The comptroller agrees with this comment.

El Paso recommends that subsection (b)(1) be changed as follows: "payments made to the producer by the first purchaser of gas for the market value of gas produced and sold, or to be sold pursuant to the terms of a contract for the sale of gas; and...."

The comptroller disagrees with this comment. The addition of "market value" is not necessary because subsection (b)(1) defines what is to be included in producer's gross cash receipts, which is the market value.

El Paso suggested that subsection (b)(2) be changed as follows: "all monies that are received as compensation by the producer in connection with any judgment, compromise, or settlement agreement for the market value of gas produced and sold, or to be sold, pursuant to a contract for the sale of gas."

The comptroller disagrees with this comment for the same reason we disagree with the comment for subsection (b)(1).

El Paso suggested that subsection (c) be changed to include the words "subject to severance tax."

The comptroller agrees with this comment.

El Paso expressed concern that the wording in subsection (c)(1) could be misinterpreted to imply that the so-called "one MCF rule" is still viable. They suggest subsection (c)(1) be changed as follows: "payments made to the producer by a purchaser under a contract for the sale of (sic) purchase of gas to be produced, if that gas is never produced and delivered to the purchaser pursuant to that contract."

The comptroller agrees with this comment.

El Paso suggested that the last sentence of subsection (c)(3) be deleted and replaced with "evidence that an initial below then current market price was agreed to be paid for gas to be sold under a replacement contract may be considered, along with other relevant evidence, on the question of whether the replacement contract was entered into as an arm's length transaction; and...."

The comptroller disagrees with this comment. The burden will be on the comptroller to prove that the price paid in a replacement contract is a below market price.

El Paso suggested that subsection (f)(2) be deleted.

The comptroller disagrees with this comment. Subsection (f)(2) is needed to determine when tax is due.

Texaco, Inc., on behalf of several producing subsidiary companies including Texaco Exploration and Production, Inc. and Four Star Oil and Gas Company endorsed the comments filed by El Paso Natural Gas Company.

The Texas Independent Producer and Royalty Owners Association, Enserch Exploration, Inc., Lone Star Gas Company, Enron Corporation, West Texas Gas, and The Association of Texas Intrastate Natural Gas Pipelines expressed the opinion that "buydowns" are not taxable and only payments for gas produced should be taxed. The attorney for

Enron and West Texas Gas considers a "buydown" to be the same as a "buyout," and therefore not taxable.

The comptroller disagrees with these comments. The comptroller considers payments made to buydown the price of gas to be a part of producer's gross cash receipts. The comptroller feels that a "buydown" is essentially an installment purchase device and, as such, is taxable.

Enserch felt the guidance provided for in the proposed rule is too late and does not conform to the Tax Code. Enserch also worries that the proposed rule will be given a retroactive effect.

The comptroller disagrees with these comments. The comptroller feels the rule is needed to clarify what is to be included, or excluded, from producer's gross cash receipts. The comptroller has applied subsection (d) on a retroactive basis for the purpose of allocating a settlement among several claims.

Lone Star Gas Company contends the definition of "non-recoupable payment" in subsection (a)(2) conflicts with the use of the term "non-recoupable" in subsection (f)(2).

The comptroller disagrees with this comment. Even though the payment may be classified as a non-recoupable payment, a buydown payment is considered part of producer's gross cash receipts.

Since Lone Star takes delivery of gas on the premises where it is produced, they are required to withhold the tax from the payments made to the producer. They contend that this withholding requirement will require the keeping of two sets of books if subsection (f)(2) of the rule is followed.

The comptroller disagrees with this comment. A tracking system may be needed, but it should not result in two sets of books.

Lone Star questions the intent of subsection (c)(3) if the comptroller determines a replacement gas purchase contract is not an arm's length contract.

The comptroller has determined that the payment would be treated the same as a "buydown" payment and has amended subsection (b)(1) accordingly.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.20. Producer's Gross Cash Receipts.**

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

(1) Arm's-length transaction—A transaction between parties free of fraud or intent to evade the tax under this section.

(2) Non-recoupable payment—A payment made by a purchaser to a producer

which is not refundable and will not be applied toward the purchase price of gas taken in the future.

(3) **Recoupable payment**—A payment made by a purchaser to a producer and is to be applied toward the price of gas to be produced and delivered to the purchaser during future periods.

(4) **Related party**—Any party with common ownership and exercising control over, or under the control of, the other party, or owned by another party which has common ownership and control over both contracting parties.

(b) The producer's gross cash receipts subject to severance tax shall include:

(1) payments made to the producer by the first purchaser of gas which relate to the price of gas produced and taken pursuant to the terms of a contract for the sale of gas, including a contract found not to be an arm's-length contract by subsection (c)(3) of this section; and

(2) all monies that are received as compensation by the producer in connection with any judgment, compromise, or settlement agreement relating to the recovery of the contract price of gas produced, as provided by subsection (d) of this section.

(c) The producer's gross cash receipts subject to severance tax shall not include:

(1) payments made to the producer by a purchaser under a contract for the sale or purchase of gas to be produced, if the gas is never produced and delivered to the purchaser pursuant to that contract;

(2) reimbursement for litigation-related expenses, such as documented attorney's fees or court costs; or reasonable interest agreed upon by the parties, or in the absence of an agreement between the parties an amount to be determined by or from the records of the producer; or court-ordered interest received by the producer in connection with any judgment, compromise, or settlement agreement arising out of a dispute involving a contract for the sale of gas;

(3) a payment made to a producer by a gas purchaser to terminate a gas purchase contract. However, a replacement contract entered into within 90 days by the producer and same purchaser, or a party related to that purchaser, covering sales from the same leases or unit subject to the terminated contract may be examined to determine if the replacement contract is an arm's-length transaction between the parties. The burden in establishing that a replacement contract is not an arm's-length contract is on the comptroller. A below market price paid for the gas in a replacement contract will be evidence that the contract was not arm's length; and

(4) a payment made to a producer by a gas purchaser to amend any provision in the gas purchase contract, except for a provision affecting the price to be paid by the purchaser.

(d) This subsection is solely for the purpose of allocating a settlement among several claims.

(1) Any judgment, compromise, or settlement amount received shall be prorated based upon the documented amounts due under the contract for each issue according to the records of the producer when the value received by a producer from a purchaser in settlement of a dispute concerning pricing and any other issue associated with the gas sales/purchase contract is less than the full amount sought by the producer. Any amount allocated as a payment defined in subsection (c)(1) of this section is not taxable. The value subject to tax is the product obtained by multiplying the settlement amount, minus litigation-related expenses and interest, by a fraction, the numerator of which is the documented value assigned to pricing and the denominator of which is the total documented amount sought by the producer. For example, a settlement of \$110,000 (minus litigation-related expenses and interest of \$10,000) for a pricing dispute of \$25,000, and an amount of \$225,000 for failure to pay for gas not taken, would result in a taxable settlement value of \$10,000 ( $100,000 \times 25,000/250,000$ ).

(2) Records of the producer shall include, but are not limited to:

(A) the contracts and the settlement agreements;

(B) accounting entries, including entries reflecting receivables and payables;

(C) court pleadings; and

(D) worksheets, including calculations reflecting settlement amounts.

(3) Whenever it is necessary to determine taxable value under this subsection, the greatest weight shall be given to the records in the order that they are listed in paragraph (2) of this subsection.

(e) When gas is sold for consideration other than cash or products extracted from the gas, the taxable value shall be determined as follows.

(1) When gas is sold for cash and any consideration other than products or residue or both, the tax shall be computed on the producer's gross cash receipts for the gas sold and, with regard to the non-

cash consideration, on the gross value of all items received.

(2) When gas is sold for any consideration other than cash, products, or residue, or a combination thereof, the tax shall be computed on the gross value of all items received for the gas sold.

(3) For purposes of this subsection, the reasonable market value shall be assigned to the non-cash consideration.

(f) Tax is due according to the following.

(1) Tax is due on payments, including recoupable payments as defined in this section and/or payments found not to be arm's-length buyouts under subsection (c)(3) of this section, made to the producer by the first purchaser of gas when the gas is produced and delivered to the purchaser.

(2) If a producer receives a non-recoupable payment as consideration for amending any provision in the contract affecting the price of the gas, then the tax shall be due based upon the value the producer would have received under the pricing provisions of the contract before they were amended until:

(A) the difference between the value the producer would have received before the contract price was amended and the value the producer received after the contract price was amended equals the non-recoupable payment; or

(B) until production from the property ceases; or

(C) until the properties are sold or until the contract is terminated in an arm's-length transaction.

(3) This subsection is solely for the purpose of determining when tax is due.

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

Issued in Austin, Texas, on July 15, 1993.

TRD-9325861

Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: August 5, 1993

Proposal publication date: January 7, 1993

For further information, please call: (512) 463-4852



**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 48. Community Care for Aged and Disabled**

**Eligibility**

**• 40 TAC §48.2911**

The Texas Department of Human Services (DHS) adopts an amendment to §48.2911, without changes to the proposed text as published in the June 4, 1993, issue of the *Texas Register* (18 TexReg 3562).

The justification for the amendment is to increase the maximum number of hours per week of family care services that a priority-1 client can receive.

The amendment will function by assisting individuals who need additional hours of service to remain in the community.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on July 16, 1993.

TRD-9325915 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: September 1, 1993

Proposal publication date: June 4, 1993

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

**Chapter 50. Day Activity and Health Services**

**Reimbursement Methodology for Day Activity and Health Services**

**• 40 TAC §50.6903**

The Texas Department of Human Services (DHS) adopts an amendment to §50.6903, without changes to the proposed text as published in the June 11, 1993, issue of the *Texas Register* (18 TexReg 3688).

The justification for the amendment is to change the method used to determine the

reimbursement rate. The proposed method will better reflect the costs incurred in the DAHS industry.

The amendment will function by ensuring continuation of the DAHS program.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on July 16, 1993.

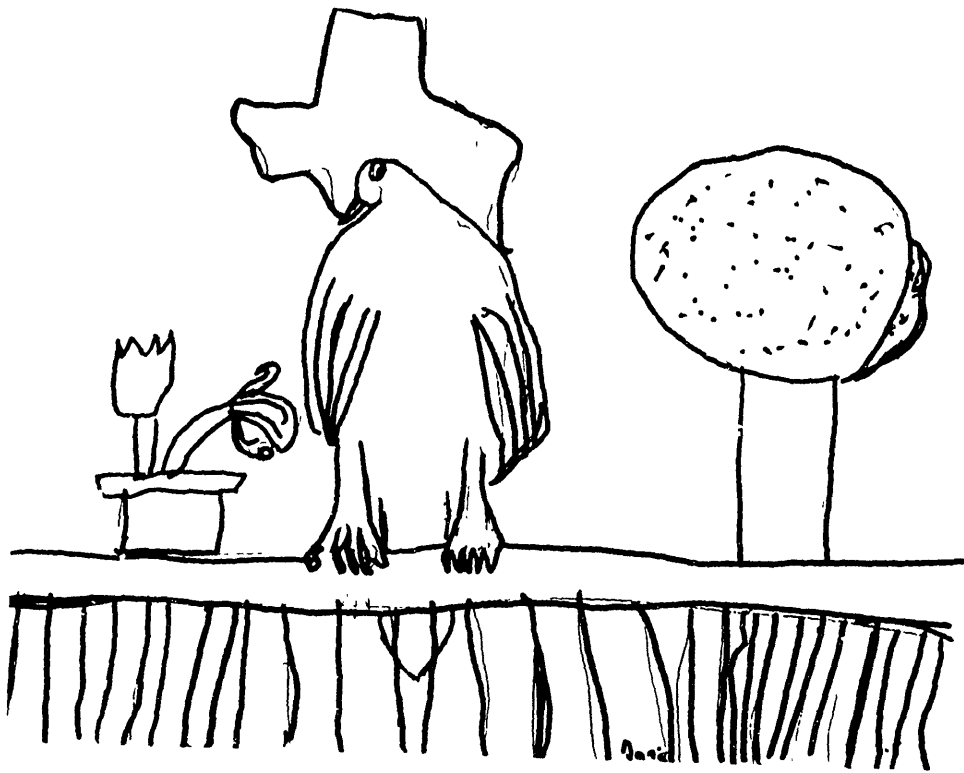
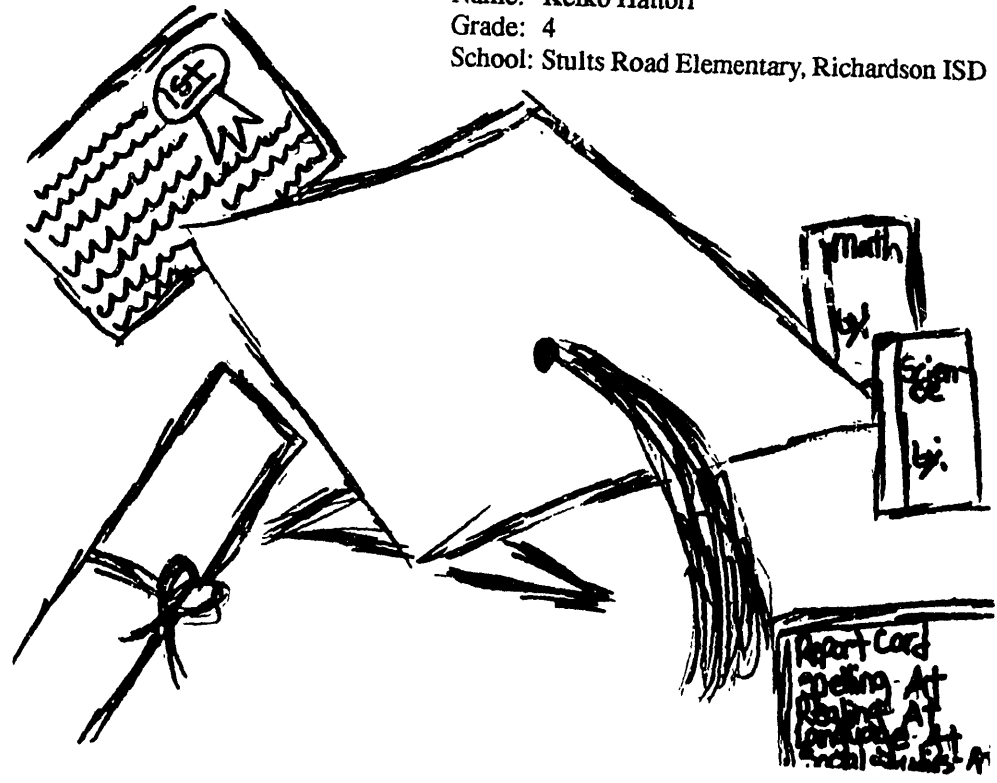
TRD-9325914 Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Effective date: September 1, 1993

Proposal publication date: June 11, 1993

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

Name: Keiko Hattori  
Grade: 4  
School: Stults Road Elementary, Richardson ISD



Name: Daniel Valdez  
Grade: 2  
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours 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 Department of Agriculture

Tuesday-Wednesday, August 3-4, 1993, 1:00 p.m. and 8:00 a.m. respectively. The Texas Wheat Producers Board of the Texas Department of Agriculture will meet at the Harvey Hotel, San Jacinto Room, 3100 I-40 West, Amarillo. According to the agenda summary, the board will call the meeting to order; hear opening remarks; swear in and seat newly-elected board member, C. L. Edwards; audit report for period ending March 31, 1993; reading of minutes, May quarterly meeting; hear quarterly financial report for period April 1-June 30, 1993; year-to-date producer collection report and projections; producer, elevator and field services report; administrative activities report; and report from the TDA Commissioner, other boards and State Fair progress. On Wednesday, the board will hear report on NAWG Summer Leadership Conference and Directors meeting; report on United States Wheat Associates Summer Executive Committee meeting; report of Farm Credit changing issues; report of Tall III Washington study trip; report, new environmental worker protection regulations to be arranged; report from other board members; discuss and set date for next quarterly meeting; elect and seat officers of the board; and adjourn.

Contact: Bill Nelson, Suite 803, Texas Commerce Bank, 2201 Civic Circle, Amarillo, Texas 79109, (806) 352-2191.

Filed: July 19, 1993, 9:29 a.m.

TRD-9326009

## Texas Air Control Board

Monday, July 26, 1993, 10:00 a.m. The Permits Oversight Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 201S, Austin. According to the complete agenda, the committee will hold a workshop on revisions to the General Rules, Regulation VI concerning control of air pollution by permits for new construction and modification; the standard exemption list; and the State Implementation Plan (SIP) concerning reorganization of existing rules, new rules regarding nonattainment review, and operation certification; and consideration and action to adopt revisions to the General Rules; Regulation VI concerning control of air pollution by permits for new construction and modification; the standard exemption list; and the SIP concerning reorganization of existing rules, new rules regarding nonattainment review, and operation certification; and consideration and action on public hearings for proposed revisions to the SIP and Texas Air Control Board rules regarding control of air pollution by permits.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78723, (512) 908-1451.

Filed: July 16, 1993, 11:51 a.m.

TRD-9325920

## Texas Cancer Council

Wednesday, August 4, 1993, 9:00 a.m. The Board of Directors of the Texas Cancer Council will meet at the Texas Medical Association, 15th and Guadalupe Streets, Tenth Floor, Austin. According to the com-

plete agenda, the board will call the meeting to order; discuss adoption of minutes; hear executive director's report; discuss breast and cervical cancer strategic plan; fiscal and policy issues; project assessments; Fiscal Year 1994 budget considerations; future initiatives; other business; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Debra Perkins at (512) 463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily Untermeyer, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: July 16, 1993, 10:45 a.m.

TRD-9325913

## Texas Department of Commerce

Thursday, July 29, 1993, 8:30 a.m. The Product Commercialization Advisory Board of the Texas Department of Commerce will meet at 410 East Fifth Street, Room 221, Austin. According to the agenda summary, the board will review the status of previous loans made under the Product Commercialization Fund and recommend additional companies for new loans. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Annette Argall (512) 320-9561, at least two days before this meeting so that appropriate arrangements can be made. Please also contact Annette Agrall if you need assistance in having English translated into Spanish.

Contact: Annette Argall, P.O. Box 12728, Austin, Texas 78711, (512) 472-5059.

Filed: July 19, 1993, 9:41 a.m.

TRD-9326013

### Texas Commission for the Deaf and Hearing Impaired

Saturday, July 31, 1993, 9:00 a.m. The Board for Evaluation of Interpreters (BEI) of the Texas Commission for the Deaf and Hearing Impaired will meet at 1524 South IH-35, Suite 200, Austin. According to the complete agenda, the board will call the meeting to order; hear chairperson's opening remarks; discuss approval of May 22 and July 2, 1993 minutes; hear public comments; chairperson's report; BEI staff report; TSID report; calendar update; new legislation: paying evaluators, multi-testing sites; meet in executive session for complaint hearing; review of applicant testing materials; certification; recertification; revocation; and discuss old and new business.

Contact: Loyce Kessler, 1524 South IH-35, #200, Austin, Texas 78711, (512) 444-3323.

Filed: July 20, 1993, 8:22 a.m.

TRD-9326058

### Texas Education Agency

Wednesday, July 28, 1993, 10:00 a.m. The Division of Proprietary Schools, Veterans Education and Driver Training of the Texas Education Agency will meet at 105 West 15th Street, John H. Reagan Building, Room 103, Austin. According to the complete agenda, the division will hold a public meeting to discuss the plan of action that is being proposed by staff to implement the mandates of House Bill 2410.

Contact: Dee Bednar, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9484.

Filed: July 16, 1993, 10:16 a.m.

TRD-9325900

### Advisory Commission on State Emergency Communications

Wednesday, July 21, 1993, 10:00 a.m. The Executive Committee of the Advisory Commission on State Emergency Communications will meet at the ACSEC Offices, 1101 Capital of Texas Highway South, B-100, Austin. According to the complete agenda, the committee will call the meeting to or-

der; hear public comment; discuss ACSEC Strategic Plan review and implementation process; discuss proposed budget and program needs for Fiscal Year 1994; discuss and possibly consider the Coastal Bend Council of Governments' Proposed Fiscal Year 1994 administrative budget; meet in executive session to discuss personnel matters (Article 6252-17, §2(e); and adjourn. Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

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

Filed: July 16, 1993, 3:04 p.m.

TRD-9325956

Wednesday, July 21, 1993, 2:00 p.m. The Task Force of the Advisory Commission on State Emergency Communications held an emergency meeting at the ACSEC Offices, 1101 Capital of Texas Highway South, B-100, Austin. According to the complete agenda, the task force called the meeting to order; heard public comment; discussed commission activities; reviewed and discussed agency organizational structure and program initiatives; and adjourned. Persons requesting interpreter services for the hearing and speech impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

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

Filed: July 16, 1993, 3:04 p.m.

TRD-9325957

### Texas State Board of Registration for Professional Engineers

Wednesday, July 28, 1993, 8:30 a.m. The Texas State Board of Registration for Professional Engineers will meet at 1917 IH-35 South, Board Room, Austin. According to the agenda summary, the board will receive reports from board members and staff; interview applicants; take action on applications for registration; reading of communications; and other related business in accordance with the agenda.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: July 16, 1993, 1:53 p.m.

TRD-9325927

Thursday, July 29, 1993, 8:30 a.m. The Texas State Board of Registration for Professional Engineers will meet at the

Balcones Research Center, The Commons Building, Austin. According to the agenda summary, the board will discuss the implementation of continuing education.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: July 16, 1993, 1:54 p.m.

TRD-9325928

### General Services Commission

Tuesday, July 27, 1993, 9:30 a.m. The General Services Commission will meet at the Central Services Building, 1711 San Jacinto Street, Room 402, Austin. According to the agenda summary, the commission will discuss participation in the Greater Austin Area Telecommunications Network; consider delegating purchasing authority to the Texas Department of Mental Health and Mental Retardation; final adoption of §125.25 regarding scheduling of state conference rooms and repeal of §115.8; extension of emergency amendment to §115.32 concerning emergency leases; publication of proposed rules §§111.11-111.19 concerning Historically Underutilized Business (HUB) Certification Program for minority and women owned businesses; adoption of new §113.19 concerning the Catalogue Purchase Procedure for Automated Information Systems; Surplus Property Management Alternatives; discuss monthly operating budget report; and monthly division issues report.

Contact: Judith Porras, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3583.

Filed: July 16, 1993, 3:36 p.m.

TRD-9325959

Thursday, August 12, 1993, 8:30 a.m. The Texas School Bus Committee and Annual Vehicle Meeting of the General Services Commission will meet at the Royce Hotel, 3401 South IH-35, Austin. According to the agenda summary, the committee will discuss school bus bodies, chassis, engines, options, safety items, various accessories, and the approved products list.

Contact: Ron Dyer, P.O. Box 13047, Austin, Texas 78711, (512) 463-3412.

Filed: July 15, 1993, 1:32 p.m.

TRD-9325823

### Governor's Office

Monday, July 26, 1993, 9:30 a.m. The Governor's Commission for Women of the Governor's Office will meet at 401 West 15th Street (Texas Medical Association), Austin. According to the complete agenda,

the commission will introduce commission members and staff; hear statement from outgoing chair, Amalia Rodriguez-Mendoza; consider and discuss approval of by-laws; brief history and current activities of the commission; Governor's office basics; Governor Ann Richards; and adjourn.

Contact: Lynn Leverty, P.O. Box 12428, Austin, Texas 78711, (512) 475-2615.

Filed: July 15, 1993, 2:27 p.m.

TRD-9325829

## Texas Department of Health

**Friday, July 23, 1993, 10:00 a.m.** The Respiratory Care Practitioners Advisory Board of the Texas Department of Health will hold an emergency meeting at the Grand Kempinski Dallas, Spectrum Room, 15201 Dallas North Parkway, Dallas. According to the complete agenda, the board will discuss approval of the minutes of the January 26, 1993 meeting; discuss and possibly act on: reports of chairperson and program administrator; final rules relating to Title 25, TAC §123.5 relating to exceptions to certification, and 25 TAC §123.10 relating to continuing education requirements; committee appointments; request to add agencies to list of organizations approving continuing education; respiratory care education programs; proposed rules relating to 25 TAC Chapter 123; and other matters not requiring board action; and setting of the next meeting date. The emergency status is necessary due to unforeseeable circumstances.

Contact: Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6632.

Filed: July 16, 1993, 5:14 p.m.

TRD-9325092

**Friday, July 23, 1993, 2:00 p.m.** The Public Health Promotion Committee of the Texas Board of Health of the Texas Department of Health will meet in Room M-721, Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the May 21, 1993 meeting; discuss and possibly act on public information update; and VISTA summer program report.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: July 15, 1993, 4:09 p.m.

TRD-9325848

**Friday, July 23, 1993, 3:00 p.m.** The Texas Board of Health Budget and Finance Committee of the Texas Department of Health will meet in Room M-741, Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the June 18, 1993, meeting; and discuss and possibly act on fiscal year 1994 operating budget.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: July 15, 1993, 4:09 p.m.

TRD-9325849

**Saturday, July 24, 1993, 8:00 a.m.** The Executive Committee of the Texas Board of Health will meet at the Texas Department of Health, Room M-741, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on items of procedure for the July 24, 1993 Texas Board of Health meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: July 16, 1993, 5:14 p.m.

TRD-9325985

**Saturday, July 24, 1993, 9:00 a.m.** The Texas Board of Health Long Term Care Committee of the Texas Department of Health will meet at the Texas Department of Health, Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the May 21, 1993 meeting; discuss and possibly act on final adoption of rules concerning administrative penalties for nursing facilities and related institutions.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: July 16, 1993, 5:14 p.m.

TRD-9325984

**Saturday, July 24, 1993, 10:00 a.m.** The Personnel Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-721, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on the appointment to the Midwifery Board.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: July 16, 1993, 5:14 p.m.

TRD-9325983

**Saturday, July 24, 1993, 10:30 a.m.** The Family Health Services Committee of the Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-652, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss approval of the minutes of the April 24, 1993 meeting; discuss and possibly act on: Chronically Ill and Disabled Childrens' Services (CIDS) recommendation for continued approval as CIDS cardiovascular diagnostic treatment centers, family health services update, and appointment to the Midwifery Board.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: July 16, 1993, 5:14 p.m.

TRD-9325986

**Saturday, July 24, 1993, Noon.** The Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-739, 1100 West 49th Street, Austin. According to the agenda summary, the board will discuss approval of minutes of the June 18, 1993 meeting; discuss and possibly act on: commissioner's report; rules (complaints; and administrative penalties for nursing facilities and related institutions); committee reports (budget/finance; disease control; emergency and disaster; environmental health; family health services; health provider, licensure and certification; hospital and ambulatory care services; long term care; public health promotion; legislative committee; strategic planning; and personnel); appointment to the Midwifery Board; Maternal and Child Health Advisory Committee report; recommendation for continued approval of Chronically Ill and Disabled Children's cardiovascular diagnostic and treatment centers; hear announcements and comments; and meeting dates for the remainder of 1993. The board will discuss in executive session the evaluation of the Commissioner of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: July 16, 1993, 5:14 p.m.

TRD-9325987

**Tuesday, July 27, 1993, 10:00 a.m.** The Advisory Committee for Personal Care Facilities of the Texas Department of Health will meet at the Texas Department of Health, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on transfer to Bureau of Long Term Care to the Texas Department of Human Services (TDHS) on September 1, 1993; nursing facility waiver and rules; and selection of committee chairperson.

**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:** July 19, 1993, 4:21 p.m.

TRD-9326044

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

**Friday, July 23, 1993, 11:00 a.m.** The Board of Directors of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Suite 300, Austin. According to the complete agenda, the board will consider and possibly act upon the following: approval of a supplemental indenture and other agreements as considered necessary for the transfer of property ownership and the Department's related Multi-Family Housing Revenue Bonds, Series 1984 (Summer Bend at Las Colinas); and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-(800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

**Contact:** Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

**Filed:** July 15, 1993, 4:09 p.m.

TRD-9325850

◆ ◆ ◆  
**Texas Incentive and Productivity Commission**

**Friday, July 30, 1993, 10:00 a.m.** The Texas Incentive and Productivity Commission will meet at the Clements Building, Fifth Floor, Committee Room Five, 15th and Lavaca Streets, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call of members; discuss approval of the minutes

of previous meeting; consider approval to authorize the chairperson or the executive director to designate employees to approve vouchers; revisions to State Employee Incentive Program Rules for Approval; revisions to Productivity Bonus Program Rules for approval; employee suggestions for approval; 1993 productivity plans for approval; agency applications for Productivity Bonus Program awards; report on administrative matters; and adjourn.

**Contact:** M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

**Filed:** July 16, 1993, 2:39 p.m.

TRD-9325938

**Friday, July 30, 1993, 10:00 a.m.** The Texas Incentive and Productivity Commission will meet at the Clements Building, Fifth Floor, Committee Room Five, 15th and Lavaca Streets, Austin. According to the revised agenda summary, the commission will take off agency from agenda item VIII, "Consideration of 1993 Agency Applications for Productivity Bonus Program Awards." (Texas Water Development Board).

**Contact:** M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393

**Filed:** July 19, 1993, 8:53 a.m.

TRD-9325999

◆ ◆ ◆  
**Texas Department of Insurance**

**Monday, July 26, 1993, 10:00 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider a request for hearing by Krueger Engineering and Manufacturing Company, Inc. for Commissioner to determine reasonableness of security for the purchase of a workers compensation policy with a deductible program pursuant to Rule XIX of the Texas Basic Manual of Rules, Classifications and Rates for Workers Compensation and Employers Liability Insurance.

**Contact:** Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** July 15, 1993, 1:31 p.m.

TRD-9325822

**Monday, July 26, 1993, 1:30 p.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to

consider the application of MCC Behavioral Care, Inc. of Eden Prairie, Minnesota, for a license to serve as a utilization review agent/entity.

**Contact:** Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** July 15, 1993, 1:31 p.m.

TRD-9325821

**Tuesday, July 27, 1993, 9:00 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment to the Articles of Incorporation of United International Life Insurance Company, Fort Worth, increasing authorized capital stock.

**Contact:** Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983

**Filed:** July 15, 1993, 1:31 p.m.

TRD-9325820

**Tuesday, July 27, 1993, 1:30 p.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for Original Charter of Title Insurance Company of America, Dallas.

**Contact:** Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

**Filed:** July 15, 1993, 1:31 p.m.

TRD-9325819

**Wednesday, July 28, 1993, 9:00 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will consider personnel; litigation; hear commissioner's orders; solvency; staff reports; legislative implementation; filing by Fidelity and Guaranty Insurance Underwriters for fidelity bond rules and rates approval; filing by Prudential Property and Casualty Insurance Company for personal catastrophe liability rate revision; filing by American Centennial Insurance for policy forms and rate approval for the new real estate mortgage protection program; the board will also consider the annual review to determine compliance of the conditions of the exemption from membership to the Texas Workers' Compensation Facility for the following companies: Petroleum Casualty Company, First Employees Insurance Company, Highlands Casualty Company, British American Insurance Company, Montfort Insurance Company, Food Industry Insurance Ex-

change, Sunbelt Insurance Company, Texas Hospital Insurance Exchange, Financial Casualty and Surety, Inc., and American Risk Funding Insurance Company.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: July 19, 1993, 8:52 a.m.

TRD-9325998

Wednesday, July 28, 1993, 10:00 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against William R. Ferguson, Highland Village, who holds a Local Recording Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: July 15, 1993, 1:31 p.m.

TRD-9325818

Thursday, July 29, 1993, 9:00 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider Appeals of Richard A. Hunter from Commissioner's Order Numbers 92-1102, 92-1110, 93-0022, and 93-0126 pertaining to a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: July 15, 1993, 1:31 p.m.

TRD-9325817

Thursday, July 29, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider Request by Toddler House, Inc. for a hearing on the calculation of a workers' compensation experience modifier.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: July 15, 1993, 1:31 p.m.

TRD-9325816

Wednesday, August 25, 1993, 9:00 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will consider public hearings under Docket Number 2023 concerning the adoption of an

amendment to 28 TAC §15.17, relating to surplus lines agents; Docket Number 2024 concerning the adoption of amendments to 28 TAC §7.27, relating to the regulation of accounting or reinsurance agreements by life, accident and health, and annuity insurers; Docket Number 2025 concerning the adoption of an amendment to 28 TAC §7.24, relating to disposal of not admitted assets; and Docket Number 2026 concerning the adoption of an amendment to 28 TAC §7.306, relating to securities lending by insurance companies to securities dealers.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: July 16, 1993, 4:32 p.m.

TRD-9325964

### Judicial Districts Board

Monday, July 26, 1993, 10:00 a.m. The Judicial Districts Board will meet in the Sixth Floor Conference Room, 205 West 14th Street, Austin. According to the complete agenda, the board (pursuant to Article 5, §7a(e), Texas Constitution) will continue to work on a statewide reapportionment of the judicial districts of the state. The board will discuss recent federal court cases and legislative proposals regarding judicial redistricting considered by the Texas Legislature during the 73rd Session; and other matters pertaining to the duties of the board and matters relating to redistricting criteria.

Contact: C. Raymond Judice, 205 West 14th Street, Austin, Texas 78701, (512) 463-1625.

Filed: July 15, 1993, 2:25 p.m.

TRD-9325828

### Texas State Library and Archives Commission

Thursday, July 29, 1993, 10:00 a.m. The Texas State Library and Archives Commission will meet at the Texas State Library, Lorenzo de Zavala Archives and Library Building, Room 202, 1201 Brazos Street, Austin. According to the complete agenda, the commission will discuss approval of the minutes of February 16, 1993 meeting; recognize retiring state library employees; receive report from the Internal Auditor; discuss approval of the Library Services and Construction Act Annual Program and Long Range Plan; Library Services and Construction Act grants: Title I-grants for library services to disadvantaged population groups; Title II-grants for public library construction; approve advisory group appointments: Library Systems Act Advisory

Board; Library Services and Construction Act Advisory Council; agreement with Atascosita Historical Society; amendments to personnel policies and adopt Standards of Conduct for Staff of the Texas State Library and Archives Commission; discuss approval of contract with the State Comptroller for post-audits and electronic approvals; consider the commission's 1994 and 1995 budgets; and hear committee reports.

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440.

Filed: July 20, 1993, 9:22 a.m.

TRD-9326067

### Texas Department of Licensing and Regulation

Wednesday, August 4, 1993, 9:00 a.m. The Inspections and Investigations: Air Conditioning of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for G. A. Feris doing business as Triangle Construction for violation of Texas Civil Statutes, Article 8861, 16 TAC §75.22(a), Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: July 16, 1993, 12:20 p.m.

TRD-9325923

### Texas Mental Health and Mental Retardation

Wednesday, July 28, 1993, 8:30 a.m. The TXMHMR Board Planning and Policy Development Committee of the Texas Mental Health and Mental Retardation will meet at the Lubbock State School (Lena Stephens Activity Center), 3400 North University Avenue, Lubbock. According to the agenda summary, the committee will hear citizens comments; legislative update; state school closure update; update to the board regarding Community Services Steering Committee; status report on Medicaid Implementation Plan; briefing regarding Medicaid rate setting; briefing regarding strategic planning process; state hospital bed capping and allocations; progress report regarding bond ratings of Community MHMR Centers; consider approval of a recommendation from the Fort Worth State School Alternative Use Committee; approval of the emergency adoption of new sections and amendments to Chapter 401, Subchapter G, Rules Gov-

erning Community MHMR Centers; consider approval of the emergency adoption of new rules governing eligibility for mental retardation services, with repeal of rules governing comprehensive diagnosis and evaluation; and emergency adoption of amendments to Chapter 405, Subchapter AA, Rules governing administrative hearings under the PMRA (formerly the MRPA). If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: June 19, 1993, 4:36 p.m.

TRD-9326046

Wednesday, July 28, 1993, 1:00 p.m. The TXMHMR Board Business and Asset Management Committee of the Texas Mental Health and Mental Retardation will meet at the Lubbock State School (Lena Stephens Activity Center), 3400 North University Avenue, Lubbock. According to the complete agenda, the committee will hear citizens comments; consider approval of Fiscal Year 1993 operating budget adjustments; Fiscal Year 1994 operating budget; report on authority delegated to the Commissioner regarding ability to transfer funds; consider approval for the use of unobligated construction balances for emergency repairs, maintenance and life safety code projects at state hospitals, state schools and state centers; proposed community use for an underutilized building at the Abilene State School; and consider items related to the West 38th Street Planned Unit Development Lease. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: June 19, 1993, 4:36 p.m.

TRD-9326048

Thursday, July 29, 1993, 8:30 a.m. The TXMHMR Board Audit Committee of the Texas Mental Health and Mental Retardation will meet at the Lubbock State School (Lena Stephens Activity Center), 3400 North University Avenue, Lubbock. According to the complete agenda, the committee will hear citizens comments; audit activity update; update on the outcome of the Internal Audit Retreat; presentation regarding the Interim Report of the Health and Human Services Commission Task Force on Restructuring; and update regarding not-for-profit action plan. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: June 19, 1993, 4:36 p.m.

TRD-9326047

Thursday, July 29, 1993, 9:00 a.m. The TXMHMR Board Human Resources Committee of the Texas Mental Health and Mental Retardation will meet at the Lubbock State School (Lena Stephens Activity Center), 3400 North University Avenue, Lubbock. According to the complete agenda, the committee will hear citizens comments; update regarding work force diversity; executive overview of compensation project report; and consider approval of a superintendent for Rusk State Hospital. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: June 19, 1993, 4:36 p.m.

TRD-9326049

Thursday, July 29, 1993, 10:30 a.m. The TXMHMR Board of the Texas Mental Health and Mental Retardation will meet at the Lubbock State School (Lena Stephens Activity Center), 3400 North University Avenue, Lubbock. According to the agenda summary, the board will call the meeting to order; hear citizens comments; discuss approval of minutes of June 14, 1993 special called meeting; and discuss other issues. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: June 19, 1993, 4:36 p.m.

TRD-9326045

## Board of Nurse Examiners

Tuesday, July 20, 1993, 8:00 a.m. The Board of Nurse Examiners met at 1812 Centre Creek Drive, Room 203, Austin. According to the emergency revised agenda summary, the board took action on the USAS Contract with the Comptroller; considered an additional education item in relation to the reactivation of Corpus Christi State University Extended Campus at Laredo; two additional rule changes; and took action on additional proposed board orders—ten consent orders; 18 declaratory orders; seven agreed orders; 25 ALJ proposals for decisions; three voluntary surrenders; and

met in executive session to discuss personnel matters. The emergency status was necessary as action was required on each of the issues prior to the next regularly scheduled meeting in September.

Contact: Erlene Fisher, P.O. Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: July 15, 1993, 4:15 p.m.

TRD-9325857

## Texas Board of Pardons and Paroles

Monday-Friday, July 26-30, 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 member(s) 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: July 15, 1993, 1:30 p.m.

TRD-9325813

Tuesday-Wednesday, July 27-28, 1993, 1:30 p.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 member(s) 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: July 15, 1993, 1:31 p.m.

TRD-9325815

Thursday, July 29, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angle Ton. According to the agenda summary, the panel(s) composed of three board member(s) 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: July 15, 1993, 1:25 p.m.

TRD-9325811

**Thursday-Friday, July 29-30, 1993, 9:00 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 member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releaseses 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: July 15, 1993, 1:30 p.m.

TRD-9325814

**Friday, July 30, 1993, 9:00 a.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 member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releaseses 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: July 15, 1993, 1:25 p.m.

TRD-9325812

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**Texas State Board of Licensure for Professional Medical Physicists**

**Tuesday, July 27, 1993, 3:00 p.m.** The Credentials Committee of the Texas State Board of Licensure for Professional Medical Physicists will meet at the Exchange Building, Room S-400, 8407 Wall Street,

Austin. According to the complete agenda, the committee will discuss and possibly act on applications under Title 22, Texas Administrative Code, §601.6.

Contact: Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6655. 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: July 19, 1993, 4:21 p.m.

TRD-9326043

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**Texas Public Finance Authority**

**Tuesday, July 27, 1993, 2:00 p.m.** The Board of the Texas Public Finance Authority will meet at the William P. Clements Building, 300 West 15th Street, Committee Room Five, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of June 21, 1993, board meeting minutes; select winning bidder and consider a resolution authorizing the issuance of bonds to finance projects for the Texas Youth Commission, the execution and delivery of documents in connection therewith and the taking of action to effect the sale and delivery of the bonds and resolving related matters; consider selection of financial advisor; certified public accountant; bond counsel for equipment and building revenue bonds Series 1993 A and B; consider adding Department of Human Services financing request to revenue bond take-out; re-consider resolution pertaining to disclosure of financial contributions; consider request for financing from Texas Department of Criminal Justice for \$38,272,122; discuss other business; set date and time for next meeting of the Board of Directors; and adjourn.

Contact: Michell Frazier, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: July 19, 1993, 3:00 p.m.

TRD-9326034

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**Public Utility Commission of Texas**

**Wednesday, July 21, 1993, 9:00 a.m.** The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Austin. According to the complete emergency revised agenda, the commissioners considered the Appeal of Examiner's Order Number Eight in Docket Number 12006-Application of Deaf Smith Electric Cooperative, Inc. for expedited authority to change rates pursuant to PUC Substantive Rule 23.23(c). The emergency status was necessary as prompt

commission action was needed to preserve jurisdiction over the subject matter of the appeal.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 19, 1993, 3:21 p.m.

TRD-9326036

**Thursday, August 5, 1993, 10:00 a.m. (Rescheduled from July 29, 1993, at 10:00 a.m.)** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will hold a fourth prehearing conference in Docket Number 10832-Houston Lighting and Power Company standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities, pursuant to Substantive Rule 23.66(h)(3).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 16, 1993, 2:57 p.m.

TRD-9325955

**Monday, August 30, 1993, 10:00 a.m. (Rescheduled from August 23, 1993, at 10:00 a.m.)** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will hold a fifth prehearing conference in Docket 10832-Houston Lighting and Power Company standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities, pursuant to Substantive Rule 23.66(h)(3).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 16, 1993, 2:57 p.m.

TRD-9325954

**Thursday, September 9, 1993, 10:00 a.m. (Rescheduled from September 2, 1993, at 10:00 a.m.)** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will hold a hearing on the merits in Docket Number 10832-Houston Lighting and Power Company standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities, pursuant to Substantive Rule 23.66(h)(3).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 16, 1993, 2:56 p.m.

TRD-9325953

**Tuesday, September 28, 1993, 9:00 a.m.** (Rescheduled from July 21, 1993). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11568-application of GTE Southwest Incorporated for approval of new service, switched data service, pursuant to Substantive Rule 23.26.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 19, 1993, 3:21 p.m.

TRD-9326035

**Monday, October 18, 1993, 9:00 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will hold a hearing on the merits in Docket Number 11624-complaint of Lizzie J. Lovall and Keeble Lovall against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 15, 1993, 3:25 p.m.

TRD-9325838

**Tuesday, November 30, 1993, 10:00 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will hold a hearing on the merits in Docket Number 11870-Application of Brazos Electric Power Cooperative, Inc. to amend Certificate of Convenience and Necessity for a proposed transmission line with Cooke County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 15, 1993, 3:06 p.m.

TRD-9325837

### **Texas Low-Level Radioactive Waste Disposal Authority**

**Wednesday, August 4, 1993, 8:30 a.m.** The Budget Committee of the Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet at the University of Texas Balcones Research Center, Room 1.102A, Austin. According to the complete agenda, the committee will call the meeting to order; consider operating budget adjustments for Fiscal Year 1994; and adjourn.

Contact: L. R. Jacobi, Jr., P.E., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

Filed: July 15, 1993, 2:03 p.m.

TRD-9325824

### **Railroad Commission of Texas**

**Monday, July 26, 1993, 9:30 a.m.** The Railroad Commission of Texas will meet in the First Floor Conference Room 1-111, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the administrative services division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: July 16, 1993, 10:40 a.m.

TRD-9325910

The commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981.

Filed: July 16, 1993, 10:39 a.m.

TRD-9325908

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: July 16, 1993, 10:38 a.m.

TRD-9325903

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: July 16, 1993, 10:39 a.m.

TRD-9325907

The commission will meet in consideration of category determinations under sections 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: July 16, 1993, 10:39 a.m.

TRD-9325906

The commission will consider and act on the office of information services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710

Filed: July 16, 1993, 10:38 a.m.

TRD-9325905

The commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will 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: July 16, 1993, 10:40 a.m.

TRD-9325911

The commission will consider and act on the Surface Mining and Reclamation Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin Hodgkiss, P.O. Box 12967, Austin, Texas 78701, (512) 463-6901.

Filed: July 16, 1993, 10:38 a.m.

TRD-9325904

The following matters will be taken up for consideration and/or decision by the commission: budget, fiscal, administrative or procedural matters, strategic planning; personnel and staffing; contracts and grants; may discuss comionetas operations; and may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: July 16, 1993, 10:40 a.m.

TRD-9325909

The commission will consider and act on the division director's report on budget, personnel and policy matters related to operations of the Alternative Fuels Research and Education Division.



Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: July 16, 1993, 10:37 a.m.

TRD-9325902

## Texas A&M University System, Board of Regents

Wednesday, July 21, 1993, 5:00 p.m. The Committee for Service Units of the Board of Regents of the Texas A&M University System met in the Board of Regents Meeting Room, College Station. According to the complete agenda, the committee discussed the Texas A&M University System's activities with respect to its initiative for South Texas.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: July 16, 1993, 2:05 p.m.

TRD-9325934

Thursday, July 22, 1993, 9:00 a.m. The Facilities Planning and Building Committee of the Board of Regents of The Texas A&M University System met in the Facilities Planning and Construction Building, Conference Room 200, Texas A&M University, College Station. According to the agenda summary, the committee possibly acted on bids; discussed appropriation of design; initiation of construction projects; construction matters for the system parts; selected architect/engineers; appropriation for contract award; approval of revised campus master plan at Texas A&M University; and possibly heard reports from System Administration.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: July 16, 1993, 2:06 p.m.

TRD-9325935

Thursday-Friday, July 22-23, 1993, 1:30 p.m. and 8:30 a.m. respectively. The Board of Regents of The Texas A&M University System will meet in the Board of Regents Meeting Room, Texas A&M University, College Station. According to the agenda summary, the board will act on bids; discuss appropriations for design and contract award; initiation of construction projects; construction matters for the system parts; selection of architect/engineers; approval and correction of minutes; authorization to approve travel vouchers; transfer of authority from executive secretary of the board to secretary of the board; easements; acquisition and disposition of real estate; appointment of members to the System Investment Advisory Committee; funding of equipment acquisitions; approval of holiday

schedules; establishment of centers; license agreements; appointments to the Board of Directors of TAMU's Private Enterprise Research Center; appointments to the Board of Visitors of Texas A&M University's Galveston Campus; contracts; appointment of Vice Chancellor for strategic programs for the Texas A&M University; emeritus titles; appointments and promotions; budget and fiscal transfers, salary increases and new positions; terminations; tenure; gifts, grants, loans and bequests; and hear reports from System Administration.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: July 16, 1993, 2:08 p.m.

TRD-9325936

## Texas Southern University

Tuesday, July 27, 1993, 5:00 p.m. The Personnel and Academic Affairs Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, School of Law Building, Room 221, Houston. According to the complete agenda, the committee will consider reports on progress of academic activities and programs; and discuss personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: July 19, 1993, 3:43 p.m.

TRD-9326039

Tuesday, August 3, 1993, 4:00 p.m. The Finance Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3715 Blodgett, TSU Warehouse, Houston. According to the complete agenda, the committee will consider 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: July 19, 1993, 3:43 p.m.

TRD-9326040

Friday, August 6, 1993, 8:30 a.m. The Board of Regents of Texas Southern University will meet at Texas Southern University, University Library, Fifth Floor, Houston. According to the complete agenda, the board will consider report from the administration; reports from the standing committees; meet in executive session; and final vote on the employment of one of the following applicants for the position of chief executive of the university: Dr. Joann

Horton, Dr. Leonard Haynes, and Otis King.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: July 15, 1993, 10:29 a.m.

TRD-9325807

## Texas State Technical College

Friday, July 23, 1993, 9:30 a.m. The Board of Regents of Texas State Technical College will meet at TSTC Amarillo Student Activity Center, Amarillo. According to the agenda summary, the board will discuss and review the following TSTC Policy Committee minute orders and reports: Committee of the Whole; Policy Committee for Instruction and Student Services; Policy Committee for Human Resource and Development; Policy Committee for Fiscal Affairs; Policy Committee for Facilities; and Committee of the Whole.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 15, 1993, 2:30 p.m.

TRD-9325830

Saturday, July 24, 1993, 8:00 a.m. The Board of Regents of Texas State Technical College will meet at TSTC Amarillo Student Activity Center, Amarillo. According to the agenda summary, the board will discuss and act on the following minute orders: classes meeting with less than ten students; request for budget change; amended schedules for tuition and fees; board plan rates, and emoluments; emergency loan funds; leases with Civil Air Patrol; Economic Opportunities Advancement Corporation; Rita Denney, and Marriott Food Services, Inc.; ratification of executive Committee action June 18, 1993 lease for facilities at the Marshall Extension Center; TSTC Amarillo campus master plan; architect selection for Student Recreation Center; employee holiday schedule; and operating budget for Fiscal Year 1994.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 15, 1993, 2:30 p.m.

TRD-9325831

Saturday, July 24, 1993, 8:15 a.m. The Board of Regents of Texas State Technical College will meet at TSTC Amarillo Student Activity Center, Amarillo. According to the agenda summary, the board will meet in executive session in accordance with Article 6252-17, §2, Subsection (e), (f), and (g).

Contact: Sandra J. Kruminow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: July 15, 1993, 2:30 p.m.

TRD-9325832

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**University of Texas System,  
M. D. Anderson Cancer  
Center**

Tuesday, July 20, 1993, 9:00 a.m. The Institutional Animal Care and Use Committee of the University of Texas System M. D. Anderson Cancer Center met in the M. D. Anderson Cancer Center Conference Room AW7.707, Seventh Floor, 1515 Holcombe Boulevard, Houston. According to the agenda summary, the committee discussed review of protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, Ph.D., 1515 Holcombe Boulevard, Houston, Texas 77030, (713) 792-3220.

Filed: July 15, 1993, 2:55 p.m.

TRD-9325833

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**Texas Water Commission**

Thursday, July 22, 1993, 8:30 a.m. The Texas Water Commission held an emergency meeting at the Sheraton Austin Hotel, Colorado Room 500 North IH-35, Austin. According to the agenda summary, the commission met in executive session to review funding and allocate resources for Fiscal Year 1994 operating expenditures; and discussed employment recommendations of the regional manager position for the 15 regions of the Texas Natural Resource Conservation Commission. The emergency status was necessary due to unforeseen circumstances requiring immediate action on these items.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: July 16, 1993, 1:10 p.m.

TRD-9325924

Wednesday, July 28, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: municipal solid waste permit; transfer of municipal solid permit; Class 3 Modification Compliance Plan; hazardous waste permit; new water quality permits; water quality permit amendments; water quality minor amendments; water quality permit renewal; water right permits; water district matters; water utility matters;

superfund contracts; hearing examiner's settled cases; in addition, the commission will consider items previous 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: July 16, 1993, 4:39 p.m.

TRD-9325969

Wednesday, July 28, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: water quality enforcements; solid waste enforcements; municipal solid waste enforcement; water utility matters; examiner's proposal for decision; meet in executive session; in addition, the commission will consider items previous 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: July 16, 1993, 4:39 p.m.

TRD-9325968

Wednesday, July 28, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will meet in executive session to discuss the following pending litigation relating to rates involving the City of Fort Worth and the City of Arlington and §13.043 of the Water Code: Texas Water Commission and the City of Arlington versus the City of Fort Worth, Cause Number 3-92-00502-CV, Third District Court of Appeals. The authority for this meeting is Texas Civil Statutes, Article 6252-17, §2(e).

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: July 19, 1993, 10:30 a.m.

TRD-9326030

Thursday, July 29, 1993, 9:30 a.m. The Texas Water Well Drillers Advisory Council of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the council will discuss and take action on the following: consider approval of the min-

utes of its May 13, 1993, meeting; consider whether to set the following complaints for a formal hearing or appropriate legal action; Sandy Albu, Mark Lewis, Brent Tjaden; Charles Bohannon, John Boren, Barth Analysis Group/Howard Hardy/Alan Hagemer, Otis Caruthers, Thomas Davis, D&S Drilling/Don Donnally/Don Galloway, City of Dell City, Cecil Ellis, Fuller, Melvin/John Gibson, Armando Hernandez, David Hunziker, Larry Johnson, Roy C. Johnson, Charlie Kuhn, Dickey Long, Joe Martinez, Doyle Murphee, Lawrence Neusch, Randall Nolan, Traye Phelps, Bill Sharp, Tommy Smith/Tommy Pipkin/Ed Wicker, Roy Stricker, Jr., and Kermit Weigand; consider certification of applicants for registration; applicants for driller-trainee registration; and consider staff reports.

Contact: Kathy Keils, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: July 20, 1993, 9:05 a.m.

TRD-9326061

Friday, July 30, 1993, 9:30 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an adjudicative hearing for administrative action to be taken against Edward Jarzombek.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:16 p.m.

TRD-9325992

Friday, July 30, 1993, 9:30 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an adjudicative hearing for administrative action to be taken against Mike Coles.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:16 p.m.

TRD-9325991

Friday, July 30, 1993, 9:30 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an adjudicative hearing for administrative action to be taken against Mike Winstead.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:15 p.m.

TRD-9325990

Friday, July 30, 1993, 9:30 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an adjudicative hearing for administrative action to be taken against Tommy Dale Arnold.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:16 p.m.

TRD-9325993

Monday, August 2, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 618, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a public hearing on request for reimbursement from petroleum storage tank remediation fund by Town North Nissan.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:16 p.m.

TRD-9325994

Friday, August 27, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 119, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a public hearing on request for reimbursement from petroleum storage tank remediation fund by Kirby Benson.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:17 p.m.

TRD-9325997

Tuesday, August 31, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1146, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a public hearing on request for reimbursement from petroleum storage tank remediation fund by ANR Freight System, Inc.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:16 p.m.

TRD-9325995

Thursday, September 2, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Lufkin City Hall, Council Chambers, 300 East Shepherd, Lufkin. According to the agenda summary, the commission will hold a public hearing to consider an application

made by Randee Corporation, for proposed Permit Number 03512 to authorize the disposal of treated effluent.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:15 p.m.

TRD-9325989

Thursday, September 2, 1993, 1:00 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Harrison County Courthouse, County Courtroom, Corner of Houston and Wellington Streets, Marshall. According to the agenda summary, the commission will hold a public hearing to consider an application by American Norit Company, Inc. for renewal of Permit Number 00703 for authorization to discharge treated domestic sewage, treated process wastewater and stormwater from a plant manufacturing activated carbon by extraction of lignite.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:15 p.m.

TRD-9325988

Tuesday, September 7, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a public hearing for administrative action to be taken against Edward Jarzombek.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: July 16, 1993, 5:17 p.m.

TRD-9325996

Tuesday, September 14, 1993, 9:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Grayson County Courthouse, East Courtroom (Second Floor), 100 West Houston, Sherman. According to the agenda summary, the commission will consider an application by Keystone Consolidated Industries, Inc., doing business as Sherman Wire, for proposed Permit Number 03582 to authorize a discharge of treated industrial wastewater into an unnamed tributary of Bever Creek; thence to Beaver Creek; thence to Deaver Creek; thence to Lake Texoma in Segment Number 0203 of the Red River Basin.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: July 15, 1993, 4:16 p.m.

TRD-9325859

## Texas Workers' Compensation Commission

Thursday, July 22, 1993, 10:00 a.m. The Texas Workers' Compensation Commission will meet at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the commission will call the meeting to order; discuss approval of minutes; possibly act on TWCC employee member to serve as vice-chairman of TWCC; rules for adoption: Chapters 128, 140, and 145; rules for repeal: Chapters 110 and 160; act on rule-making petitions; rules for proposal and amendment: Chapters 129, 130, 124, 126, 129, and 141; rules for amendment: Chapter 152; act on applications for self-insurance; meet in executive session; act on matters considered in executive session; discuss and direct staff on any issues regarding policy or rules; hear general reports and act; plan future public meetings; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7938.

Filed: July 15, 1993, 2:07 p.m.

TRD-9325826

Friday, July 23, 1993, 9:30 a.m. The Medical Advisory Committee of the Texas Workers' Compensation Commission will meet at the Southfield Building, Rooms 910-911, 4000 South IH-35, Austin. According to the agenda summary, the commission will call the meeting to order; discuss approval of May 21, 1993 minutes; discuss and possibly approve treatment guidelines; discuss and revise medical fee guideline; and TWCC Advisory #92-09B; discuss audit selection criteria for health care providers; improperly completed bills; establish draft agenda; and next meeting date; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7938.

Filed: July 15, 1993, 2:06 p.m.

TRD-9325825

## Regional Meetings Meetings Filed July 15, 1993

The Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, July 20-22, 1993, at 9:00 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9325863.

The Gonzales County Appraisal District Appraisal Review Board will meet at 928 St. Paul Street, Gonzales, July 27, 1993, at 9:00 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9325862.

**The Harris County Appraisal District Board of Directors** met at 2800 North Loop West, Eighth Floor, Houston, July 21, 1993, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9325845.

**The High Plains Underground Water Conservation District Number One Board of Directors** met at 2930 Avenue Q, Conference Room, Lubbock, July 22, 1993, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9325858.

**The Houston Galveston Area Council Projects Review Committee** met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, July 20, 1993, at 9:15 a.m. Information may be obtained from Rowena Ballas, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9325809.

**The Houston Galveston Area Council H-GAC Board of Directors** met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, July 20, 1993, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9325808.

**The Kendall Appraisal District Board of Directors-Insurance Subcommittee** met at 121 South Main Street, Boerne, July 22, 1993, at 3:30 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9325836.

**The Kendall Appraisal District Board of Directors-Personnel Subcommittee** met at 121 South Main Street, Boerne, July 22, 1993, at 4:30 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9325835.

**The Kendall Appraisal District Board of Directors** met at 121 South Main Street, Boerne, July 22, 1993, at 5:00 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9325834.

**The South Plains Association of Governments Regional Review Committee** met at 1323 58th Street, Lubbock, July 21, 1993, at 10:00 a.m. Information may be obtained from Debra Frankhouser, P.O. Box 3730, Lubbock, Texas 79452, (806) 762-8721. TRD-9325846.

**The South Texas Development Council Regional Review Committee** will meet at the Zapata County Public Library, Zapata, July 27, 1993, at 10:00 a.m. Information may be obtained from Juan Vargas, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9325827.

**The Tarrant Appraisal District Board of Directors** will meet at 2301 Gravel Road, Fort Worth, July 23, 1993, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9325806.

### ◆ ◆ ◆ Meetings Filed July 16, 1993

**The Andrews Center Board of Trustees** met at Highway 19 South at FM 1615, Athens, July 22, 1993, at 4:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9325940.

**The Austin-Travis County Mental Health Mental Retardation Center Board of Trustees** met at 1430 Collier Street, Board Room, Austin, July 19, 1993, at 6:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 440-4031. TRD-9325963.

**The Austin-Travis County Mental Health Mental Retardation Center Finance and Control** met at 1430 Collier Street, Austin, July 21, 1993, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78764, (512) 440-4141. TRD-9325943.

**The Austin-Travis County Mental Health Mental Retardation Center Board of Trustees** met at 1430 Collier Street, Board Room, Austin, July 22, 1993, at 7:00 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764, (512) 447-4141. TRD-9325966.

**The Bastrop Central Appraisal District Board of Directors** met at 1200 Cedar Street, Bastrop, July 22, 1993, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9325961.

**The Brazos Valley Solid Waste Management Agency Board of Trustees** met at 1101 Texas Avenue, College Station, July 20, 1993, at 1:30 p.m. Information may be obtained from Cathy Locke, 1101 Texas Avenue, College Station, Texas 77840, (409) 764-3507. TRD-9325939.

**The Capital Area Rural Transportation System (CARTS) CARTS Board of Directors** met at 2010 East Sixth Street, Austin, July 22, 1993, at 9:00 a.m. Information may be obtained from Edna Burroughs, 2010 East Sixth Street, Austin, Texas 78702, (512) 385-7473. TRD-9325890.

**The Cass County Appraisal District Appraisal Review Board** met at the Cass County Appraisal District Office, 502 North Main Street, Linden, July 21, 1993, at 9:00 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden,

Texas 75563, (903) 756-7545. TRD-9325901.

**The Central Appraisal District of Taylor County Appraisal Review Board** met at 1534 South Treadaway, Abilene, July 19-22, 1993, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9325941.

**The Central Appraisal District of Taylor County Appraisal Review Board** met at 1534 South Treadaway, Abilene, July 23, 1993, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9325942.

**The Dallas Central Appraisal District Appraisal Review Board** met at 2949 North Stemmons Freeway, Dallas, July 20, 1993, at 10:00 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9325889.

**The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees** met in the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, July 22, 1993, at 3:00 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9325933.

**The Eastland County Appraisal District Appraisal Review Board** will meet in the Commissioner's Courtroom, Second Floor, Eastland County Courthouse, Eastland, July 27, 1993, at 10:00 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9325885.

**The Ellis County Appraisal District Appraisal Review Board** met at 406 Sycamore Street, Waxahachie, July 19, 1993, at 9:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9325867.

**The Ellis County Appraisal District Appraisal Review Board** met at 406 Sycamore Street, Waxahachie, July 20, 1993, at 9:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9325962.

**The Ellis County Appraisal District Board of Directors** met at 406 Sycamore Street, Waxahachie, July 22, 1993, at 7:00 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9325960.

**The Golden Crescent Private Industry Council Oversight Committee** met at 2401 Houston Highway, Victoria, July 19, 1993,

at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9325958.

The Hale-Hockley County Education District #8 Board of Directors met at the Citizens State Bank, Anton, July 20, 1993, at 7:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9325926.

The Heart of Texas Council of Governments Executive Committee met at 300 Franklin Avenue, HOTCOG Board Room, Waco, July 22, 1993, at 10:00 a. m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9325921.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, July 22, 1993, at 7:00 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9325925.

The Lower Colorado River Authority Retirement Benefits Committee met at 3701 Lake Austin Boulevard, Hancock Building, Room H-203, Austin, July 20, 1993 at 8:00 a.m. (Rescheduled from previously posted meetings scheduled for 10:00 a.m. and 1:00 p.m. on the same date). Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325945.

The Lower Colorado River Authority Board of Directors met at 3701 Lake Austin Boulevard, Hancock Building, Austin, July 21, 1993, at 9:00 a. m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325946.

The Lower Colorado River Authority Audit Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, July 21, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325952.

The Lower Colorado River Authority Finance and Administration Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, July 21, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325951.

The Lower Colorado River Authority Energy Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, July 21, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325950.

The Lower Colorado River Authority Conservation and Environmental Protection Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, July 21, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325949.

The Lower Colorado River Authority Natural Resources Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, July 21, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325948.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Austin, July 21, 1993, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9325947.

The Lower Rio Grande Valley Development Council Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, July 22, 1993, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9325887.

The Mental Health Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, July 22, 1993, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9325864.

The Mental Health Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, July 22, 1993, at 1:00 p.m. (Revised agenda). Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9325912.

The Middle Rio Grande Development Council Budget Committee met at the MRGDC Administration Office, 1904 North First, Carrizo Springs, July 22, 1993, at 9:00 a.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9325922.

The North Central Texas Council of Governments Transportation Department will meet in the South Texas Room, Amon G. Carter Exhibits Hall, Will Rogers Memorial Center, 3400 Crestline Road, Fort Worth, July 23, 1993, at 9:00 a.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9325898.

The North Central Texas Council of Governments Transportation Department will meet in the South Texas Room, Amon G. Carter Exhibits Hall, Will Rogers Memorial Center, 3400 Crestline Road, Fort Worth, July 23, 1993, at 9:00 a.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9325866.

The North Central Texas Council of Governments Transportation Department will meet in the South Texas Room, Amon G. Carter Exhibits Hall, Will Rogers Memorial Center, 3400 Crestline Road, Fort Worth, July 26, 1993, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9325865.

The North Central Texas Council of Governments Transportation Department will meet in the Commissioners' Court, Dallas County Administration Building, 411 Elm Street, July 26, 1993, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9325899.

The Sabine River Authority of Texas Board of Directors will meet at the Fredonia Hotel, Nacogdoches, July 23, 1993, at 10:00 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9325931.

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**Meetings Filed July 19, 1993**

The Bosque Central Appraisal District Board of Directors met at the Bosque Central Appraisal District Office, 104 West Morgan Street, Meridian, July 22, 1993, at 7:30 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9326038.

The Education Service Center-Region 17 Board of Directors will meet at 1111 West Loop 289, Board Room, Lubbock, August 12, 1993, at 9:00 a.m. Information may be obtained from Virgil (Ed) Flathouse, 1111 West Loop 289, Lubbock, Texas 79416, (806) 793-4854. TRD-9326011.

The Fisher County Appraisal Review Board will meet at the Fisher County Commissioner's Court-Room, Fisher County Courthouse, Roby, July 30, 1993, at 9:00 a.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9326010.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis Street, Sherman, July 28, 1993, at 7:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis Street, Sherman, Texas 75090, (903) 893-9673. TRD-9326005.

The Gulf Coast State Planning Region Transportation Policy Council will meet at 3555 Timmons Lane, Second Floor Conference Room A, Houston, July 28, 1993, at 9:30 a.m. Information may be obtained from Rosalind Hebert, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9326012.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, July 28, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9326031.

The Lower Neches Valley Authority Board of Directors will meet at the LNVA Office Building, 7850 Eastex Freeway, Beaumont, July 29, 1993, at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9326006.

The North Central Texas Council of Governments Executive Board held an emergency meeting at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, July 22, 1993, at 12:45 p.m. The emergency status was necessary as monthly business had to be conducted. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9326000.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, July 26, 1993, at 10:00 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9326004.

The San Jacinto River Authority Board of Directors will meet at the Lake Conroe Office Building, Conference Room, Highway 105 West, Conroe, July 28, 1993, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9326007.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of the Filter Plant, Comanche County, Lake Proctor, July 22, 1993, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9326041.

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**Meetings Filed July 20, 1993**

The Sabine Valley Center Finance Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, July 26, 1993, at 6:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9326064.

The Sabine Valley Center Personnel Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, July 26, 1993, at 6:30 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9326065.

The Sabine Valley Center Care and Treatment Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, July 26, 1993, at 6:30 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9326063.

The Sabine Valley Center Board of Trustees will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, July 26, 1993, at 7:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9326066.

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The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, August 2, 1993, at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280. TRD-9326062.

# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Air Control Board Correction of Error

The Texas Air Control Board adopted an amendment to 31 TAC §111.111, concerning requirements for specified sources. The rule appeared in the July 9, 1993, *Texas Register* (18 TexReg 4508).

In the second paragraph of the preamble a reference to §111.111(a)(4)(B) states that in the amendment requires "that daily visual observation of gas flares for the purpose of determining the existence of visible emission be conducted for a minimum of six minutes." This a proofreading error by the agency. The rule language requires a "spot check of flares for smoke." No minimum observation time is specified except in the case of noncomplying flares.

## Notice of Contested Case Hearing Number 308

An Examiner for the Texas Air Control Board (TACB) will conduct a contested case hearing to consider the application of Livingston Materials Company (the Applicant) as to whether the proposed facility meets the criteria as an exempted facility. The application filed by the Applicant is for construction and operation of a concrete batch plant under TACB Standard Exemption Number 71. The plant will perform wet batching and will emit air contaminants, specifically particulate matter. The plant location is at 1002 Beatty Street, Polk County, Livingston, Texas 77351.

**Deadline for Requesting to be a Party.** At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the Applicant and the TACB Staff. Any person who may be affected by emissions from the proposed facility who wants to be made a party must send a specific written request for party status to Hearings Examiner Patricia Robards, and make sure that this request is actually received at the TACB Central Office, 12124 Park 35 Circle, Austin, Texas 78753 by 5:00 p.m. on Monday, August 2, 1993. The Examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the TACB before publication of this notice will not be considered as a request for party status. No Correspondence should be sent to any member of the Texas Air Control Board at any time regarding this hearing. The Examiner will decide on party status at the prehearing conference.

**Prehearing Conference.** The Examiner has scheduled a prehearing conference at 1:30 p.m. on Wednesday, August 11, 1993, at the TACB Central Office, Room 246-E, 12124 Park 35 Circle, Austin, Texas 78753. At this conference, the Examiner will consider any motions of the

parties, but may grant contested motions for continuance only upon proof of good cause. The Examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

**Time and Place of Hearing.** The Examiner has set the hearing on the merits to begin at 1:30 p.m. on Tuesday, August 24, 1993, at the TACB Central Office, Room 246-E, 12124 Park 35 Circle, Austin, Texas 78753.

**What the Applicant Must Prove.** This hearing is a contested case hearing under §13 of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. It is generally conducted like a trial in district court. The Applicant must demonstrate, by a preponderance of the evidence, that the proposed facility will meet the qualifications and requirements of TACB Regulation VI, §116.6, TACB Standard Exemption Number 71, and the Texas Health and Safety Code, §382.058.

**Public Attendance and Testimony.** Members of the general public may attend the prehearing conference and the hearing. Those who plan to attend are encouraged to telephone the TACB Central Office in Austin, Texas at (512) 908-1770 a day or two prior to the prehearing conference and the hearing date in order to confirm the settings, since continuances are sometimes granted. Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Hearings Section of the TACB Legal Division at (512) 908-1770 to find out the names and addresses of all persons who may be contacted about the possibility of presenting testimony. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 908-1815. (Requests should be made as far in advance as possible.)

**Information About the Application and TACB Rules.** Information about the application and copies of the TACB's Rules and Regulations are available at the Texas Air Control Board Regional Office located at 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, the TACB Central Office located at 12124 Park 35 Circle, Austin, Texas 78753 and at the Livingston City Hall Office, located at 200 West Church Street, Livingston, Texas 77351.

**Legal Authority.** This hearing is called and will be conducted under the authority of the Act, §§382.029, 382.0291, 382.031, 382.057, and 382.058 and TACB §§103.31, and 103.41-103.66.

Issued in Austin, Texas, on July 13, 1993.

TRD-9325791 William R. Campbell  
Executive Director  
Texas Air Control Board

Filed: July 15, 1993

**Texas Commission on Alcohol and Drug Abuse**  
**Correction of Error**

The Texas Commission on Alcohol and Drug Abuse proposed amendments to 40 TAC §153.4 and §153.5, new §153.19, §153.36, and amendments to §153.36 and §153.38, concerning DWI Education Program Standards and Procedures. The rules appeared in the July 2, 1993, *Texas Register* (18 TexReg 4293)

In §153.4 in the first sentence, the "s" was omitted from the word "standards".

In §153.5 in the second sentence the "d" was omitted from the word "prescribed". In the third sentence the "d" was omitted from the word "issued".

In §153.19, due to a proofreading error by the *Texas Register* the preamble says there will not be fiscal implications as a result of enforcing or administering the rule. It should read "there will be fiscal implications". The fiscal implications are printed correctly.

In §153.36(15) "10" should be in arabic numerals since it is a number greater than nine.

In §153.36(16) the "d" should be omitted from the word "provided".

In §153.38(L) the correct wording should be "Each application for instructor recertification shall be accompanied by the applicable fee."



**Comptroller of Public Accounts**  
**Request for Proposals**

Notice of Request for Proposals: Pursuant to Texas Civil Statutes, Article 6252-11c, (Use of Private Consultants by State Agencies), the Comptroller of Public Accounts announces its Request for Proposals (RFP) for a performance review of the Texas Department of Criminal Justice. The purpose of the RFP is to obtain proposals regarding an evaluation of the programs and functions of the Department of Criminal Justice relating to containing costs, improving management strategies, and reducing recidivism. The performance review will offer recommendations based on detailed findings developed as a result of the evaluation. The successful proposer will be expected to begin field work on this project on or about September 1, 1993.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 E. 17th St., Room G26, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, July 23, 1993, between 1 p.m. and 5 p.m. Central Zone Time (CZT) and during normal business hours thereafter.

Closing Date: Proposals must be received in the Senior Legal Counsel's Office no later than 4 p.m. (CZT), on August 13, 1993. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the deputy comptroller, who will make a recommendation to the comptroller. The comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The comptroller reserves the right to accept or reject any or all proposals submitted. The comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP-July 23, 1993, 1 p.m.(CZT); Mandatory Letter of Intent Due-August 2, 1993, 4 p.m. (CZT); Proposals Due-August 13, 1993, 4 p.m. (CZT); and Contract Execution-August 25, 1993, or as soon thereafter as possible.

Issued in Austin, Texas, on July 16, 1993.

TRD-9325937 Arthur F. Lorton  
 Senior Legal Counsel  
 Comptroller of Public Accounts

Filed: July 16, 1993



**Office of Consumer Credit**  
**Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period</u> <u>(Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/</u> <u>Commercial (2) thru \$250,000</u>	<u>Commercial(2)</u> <u>over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	07/19/93-07/25/93	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Consumer Credit Commissioner

Issued in Austin, Texas, on July 12, 1993.

Filed: July 19, 1993

TRD-9326008 Al Endsley





## Texas Education Agency Notice of Contract Amendment

The Texas Education Agency must continue to expand the Texas Assessment of Academic Skills (TAAS) program in order to comply with the student assessment transition plan adopted by the State Board of Education. This expansion provides for oral language proficiency assessment, end-of-course tests, and performance-based assessments. National Computer Systems, P.O. Box 4203, Iowa City, Iowa, holds the current contract for test development for this assessment program, and the materials produced as a result of this contract are secure as specified in the Texas Education Code, §35.030. Because no other company has access to this information and because it is necessary to maintain continuity with previously developed items, the Texas Education Agency has amended the contract with National Computer Systems for an additional \$14,565,693 and extended the contract through August 31, 1994. (See October 9, 1990, issue of the *Texas Register* (15 TexReg 5966) and September 27, 1991, issue of *Texas Register* (16 TexReg 5345), July 7, 1992, issue of *Texas Register* (17 TexReg 4904), and August 25, 1992, issue of *Texas Register* (17 TexReg 5810).

Issued in Austin, Texas, on July 14, 1993.

TRD-9326003      Lionel R. Meno  
Commissioner of Education

Filed: July 19, 1993

## Texas Department of Health Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered John R. Stallings, DVM of Plano to cease and desist using any sources of radiation in his possession at this facility or at any other location in Texas until his x-ray equipment is properly registered and all appropriate fees for registration have been paid. The bureau determined that the continued use of unregistered radiation sources at this facility constitutes an immediate threat to public health and safety. Doctor Stallings is further required to provide written evidence satisfactory to the bureau regarding the actions taken to correct the violation and the method 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, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on July 15, 1993.

TRD-9325919      Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: July 16, 1993

## Notices of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to

assess an administrative penalty to Bee-Line Services, Inc., also doing business as Paragon Wireline, Inc., Bryan, holder of Radioactive Material License Number L-03436. A penalty of \$18,000 was proposed against the company for violations of the Texas Regulations for Control of Radiation. The violations created a potential threat to the health and safety of the public and the environment, and resulted in radioactive material being stored at an unauthorized location.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on July 15, 1993.

TRD-9325918      Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health.

Filed: July 16, 1993

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to John R. Stallings, DVM of Plano for violations of the Texas Regulations for Control of Radiation. A penalty of \$10,000 is proposed to be assessed to Doctor Stallings for each and every day of violation for the period of May 1, 1990, until such time all sources of radiation have been properly registered, disposed of or transferred to a registered facility. The violations include failure to register radiation-producing equipment.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on July 15.

TRD-9325917      Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health.

Filed: July 16, 1993

## Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued June 2, 1993, to F. Lynn Williams, DDS, 9533 Losa Drive, Suite 2, Dallas, Texas 75218.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on July 15, 1993.

TRD-9325916      Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: July 16, 1993

## State Board of Insurance Notice of Hearings

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2027, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new §§31.101-31.107, concerning the requirements for, and audit coverages applicable to, the receiver and any special deputy receiver appointed under the Insurance Code, Article 21.28, the rule. Proposed new §31.103 prescribes the nature of the audits to be performed. Proposed new §31.104 provides for the scope and frequency of the audits. Proposed new §31.105 contains the audit reporting requirements. Proposed new §31.106 determines the manner of assessing audit costs. Proposed new §31.107 is a severability clause. These proposed rules were developed by the Texas Department of Insurance with review and comment by the Office of the State Auditor as required by Article 21.28, §12(j).

Issued in Austin, Texas, on July 19, 1993.

TRD-9326019      Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2039, scheduled for 2:00 p.m. August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new §3.6011, concerning the responsibility and obligation of an insurer to provide a copy of a TDI-promulgated form entitled Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment Insurance with each new policy and certificate of credit life, credit disability, and involuntary unemployment insurance.

The new section provides that all insurers must provide the Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment Insurance with each policy and certificate of credit life, credit disability and involuntary unemployment insurance. That Consumer Bill of Rights must also accompany each renewal notice for credit life, credit disability, and involuntary unemployment insurance, unless the current version of that Consumer Bill of Rights has been previously provided to the insured by the insurer. Form CL-CD-IU-CBR, Consumer Bill of Rights for Credit Life, Credit Disability and Involuntary Unemployment Insurance, is filed with the Office of the Secretary of State, Texas Register Section, and incorporated in the rule by reference. The form can be obtained from the Texas Department of Insurance, Publications Department, MC 108-5A, P.O. Box 149104, Austin, Texas 78714-9104.

A Spanish language version of the form will be promulgated at a later date.

Issued in Austin, Texas, July 19, 1993.

TRD-9326018      Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2028, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new §§31.201-31.207 concerning the requirements for, and audit coverages applicable to, each guaranty association established under Article 9.48, 21.28-C, or 21.28-D of the Texas Insurance Code. Proposed new §31.201 and §31.202 state the purpose and applicability of the rule. Proposed new §31.203 prescribes the nature of the audits to be performed. Proposed new §31.204 provides for the scope and frequency of the audits. Proposed new §31.205 contains the audit reporting requirements, and proposed new §31.206 determines the manner of assessing audit costs. Proposed new §31.207 is a severability clause. These proposed rules were developed by the Texas Department of Insurance with review and comment by the Office of the State Auditor as required by Article 21.28, §12(j).

Issued in Austin, Texas, on July 19, 1993.

TRD-9326020      Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2029, scheduled for 9:00 a.m. August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed new §5.9301, concerning the policy form and endorsement filing requirements for insurers sharing insurance coverage on a single commercial risk or account on a pro-rata basis. It is not uncommon in today's market to have commercial risks or accounts that require limits of liability that a single insurer cannot provide, or a risk or account which may have hazards that a single company is not willing to accept based on the total limit of liability. In such instances, the commercial risk or account may be shared by two or more insurers on a pro-rata basis. Commercial property insurers and general liability insurers, pursuant to the Insurance Code, Article 5.13-2, §8, and commercial multi-peril insurers, pursuant to the Insurance Code, Article 5.81, and §5.9101 of this title (relating to Multi-peril Policies) are required to file, on an individual insurer basis, policy forms and endorsements for approval by the board. This individual insurer filing procedure is required regardless of whether several insurers are insuring the same risk or account on a shared basis. The proposed rule is necessary to except those insurers that are providing shared commercial insurance coverages on a single commercial risk or account from the requirement that each individual insurer file policy forms and endorsements. Without this rule, each insurer participating on a single commercial risk or account would be required to use its own individual policy forms that have been approved by the board, and there could be non-concurrence of coverage for the same commercial risk or account. The rule provides for one of the participating insurers on a shared commercial risk or account to be designated as the lead insurer, and the policy forms and endorsements approved by the board for that lead insurer are to be used by other insurers being required to file, for approval, the policy forms and endorsements of the lead insurer. The lead insurer is defined as the insurer

providing the largest percentage of coverage for a single commercial risk or account or the insurer designated by the insured as the lead insurer. The Subchapter M heading is also being amended to reflect the fact that the subchapter addresses more than one filing requirement.

Issued in Austin, Texas, on July 19, 1993.

TRD-9326021 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2030, scheduled for 9:00 a.m. August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider an amendment to §5.3902, concerning the requirements for equivalent coverage, as provided for in the Insurance Code, Article 5.13-2, §8(e), for policy forms filed by individual insurers for commercial property insurance, general liability insurance, commercial casualty insurance, and medical professional liability insurance, and as provided in §5.9101(f)(5) of this title (relating to Multi-Peril Policies) for policy forms filed by individual insurers for commercial multi-peril insurance. The amendments are necessary because of the changes to Article 5.13-2, enacted by the 73rd Texas Legislature in House Bill 1461. The amendment to §5.9302(a) is necessary to include commercial casualty insurance and medical professional liability insurance as being subject to the equivalent coverage requirements. A new subsection (b) is added to clarify the meaning of the term "commercial casualty" insurance, and subsequent subsections are redesignated accordingly. Current subsection (d) is redesignated as subsection (e) and is amended to indicate that policy forms are to be filed with the Texas Department of Insurance instead of the State Board of Insurance, in accordance with changes in the structure and operation of the Texas Department of Insurance enacted by House Bill 1461. The amendment to current subsection (g), which is redesignated as subsection (h), is needed to exempt policy forms used with large risks from the requirement to be filed with the Texas Department of Insurance for approval and to clarify that policy forms for use with large risks must, however, continue to include all provisions and conditions required by the Insurance Code, including any specific notices to policyholders. Current subsection (h), which has been redesignated as subsection (i), is amended to conform the requirement of the amount of a total premium for eligibility as a large risk to amendments to Article 5.13-2. The new requirements include total premium amounts of \$50,000 for property insurance in lieu of \$25,000 and \$100,000 for commercial multi-peril in lieu of \$75,000. Technical editing changes include the addition of subsection headings and corrections to subsection references.

Issued in Austin, Texas, on July 19, 1993.

TRD-9326022 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2031, scheduled for 9:00 a.m. August 30, 1993, in Room 100 of

the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendment to §5.9101, concerning commercial multi-peril insurance and the filing of rates and policy forms for a commercial multi-peril policy. Pursuant to the amendments to the Insurance Code, Article 5.13-2, enacted under House Bill 1461 by the 73rd Texas Legislature, the amendments to §5.9101 are necessary to add commercial casualty insurance and medical professional liability insurance as eligible lines of insurance under a commercial multi-peril policy for the file and use of rates and the prior approval of policy forms. This will ensure that these lines in both the monoline and multi-peril coverages will be regulated in the same manner. The amendments also clarify the term "commercial casualty insurance." Pursuant to the amendments to Article 5.13-2, the supplementary rating information required to be submitted for each line of insurance is broadened to include premium discounts and rating plans such as experience, schedule and retrospective rating. A clarifying statement is added under subsection (f) to clearly indicate that policy forms and endorsements for use with a "large" risk as defined in the Insurance Code, Article 5.13-2, §8(f), are exempt from any filing requirements in subsection (f). In addition, because of the changes to the structure and operation of the Texas Department of Insurance enacted by House Bill 1461, references to the State Board of Insurance are deleted, and the Texas Department of Insurance is substituted.

Issued in Austin, Texas, on July 19, 1993.

TRD-9326023 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2032, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendments to §§5.9001-5.9004, and new §§5.9005-5.9014, concerning the Amusement Ride Safety Inspection and Insurance Act. The amendments and new sections to Subchapter J are necessary to clarify and to better define the scope of amusement rides operating in Texas; to clarify the criteria for amusement ride inspections; to establish a system to validate the qualifications of inspectors conducting amusement ride inspections; and to clarify the requirements of the Act.

These sections provide safety inspection standards and insurance minimums on amusement ride owner/operators to protect the public in their expectation of a safe, controlled, and insured amusement ride. The proposal of new §§5.9005-5.9006 is simultaneous with the proposed repeal of present §§5.9005-5.9008. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. New §5.9005 (relating to Qualifications of Personnel Conducting Safety Inspections of Amusement Rides and Devices) replaces existing §5.9005 (relating to Quarterly Injury Reports). New §5.9006 (relating to Designation of Safety Inspector for Amusement Ride and Devices) replaces existing §5.9006 (relating to Filing Affidavit). New §5.9007 (relating to Quarterly Injury Reports) replaces existing §5.9007 (relating to Board Information Request). New §5.9008 (relating to Filing Affidavit) replaces existing §5.9008 (relating to Board Confirmation of Required In-

insurance and Inspection Certificate; Rule Construction). Proposal of these sections includes the adoption by reference of new and revised forms for use by all insurers and amusement ride owners/operators subject to the Insurance Code, Article 21.60. The board has filed a copy of the forms with the Secretary of State's office, Texas Register section. Persons desiring copies of the forms can obtain such from the Texas Department of Insurance, Loss Control Regulation Division, Mail Code 105-9A, P.O. Box 149104, Austin, Texas 78714-9104. Copies are also available for pickup from the William P. Hobby State Office Building, Loss Control Regulation Division, 333 Guadalupe, Austin, Texas.

Issued in Austin, Texas, on July 19, 1993.

TRD-9326024 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2033, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider the proposed repeal of §§5.9005-5.9008 concerning the requirements for the Amusement Ride Safety Inspection and Insurance Act, Article 21.60 of the Insurance Code. The repeal of §§5.9005-5.9008 is necessary to enable the board simultaneously to adopt new §5.9005 and §5.9006, which replace the repealed §5.9005 and §5.9006 with new provisions concerning the Amusement Ride Safety Inspection and Insurance Act and renumber and make administrative changes to §§5.9005-5.9008 as §§5.9007-5.9010. Notification appears elsewhere in this issue of the *Texas Register* of the proposed new sections which replace the repealed sections.

Issued in Austin, Texas, on July 19, 1993.

TRD-9328028 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance proposes at a public hearing under Docket Number 2034, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider the repeal of §§19.1001-19.1011, concerning the continuing education requirements for agents.

The repeal of these sections is necessary for the State Board of Insurance to facilitate the Legislative intent of House Bill 1461. House Bill 1461 was passed by the 73rd Legislature, Regular Session, with an effective date of September 1, 1993, and provides that administration of continuing education programs for agents by the Department is discretionary. House Bill 1461 also makes participation in continuing education programs by agents voluntary, unless continuing education is otherwise required by statute or applicable law.

The repeal of §§19.1001-19.1011 will enable the Department to recognize or administer continuing education programs in accordance with provisions of House Bill 1461,

which added Article 21.01-2 to the Insurance Code. Section 19.1001 discusses the purpose and scope of the continuing education requirements and program. Section 19.1002 discusses the definitions of terms used throughout the subchapter. Sections 19.1003-19.1005 discuss the continuing education requirements for each agent during a two year period, exemptions, and penalties for failure to comply with continuing education requirements. Section 19.1006 discusses continuing education course content. Section 19.1007 and §19.1008 address maintenance of continuing education records and the Department's ability to review the books and records of continuing education course providers and agents. Section 19.1009 addresses the establishment of an Advisory Council to assist in the administration of continuing education programs. Section 19.1010 and §19.1011 address the distribution of these rules to interested parties and the types of forms that correspond to the different filings and registration documents mentioned in the rules.

The repeal, with an effective date of September 1, 1993, will not alter, modify or eliminate the responsibility of the Department to administer continuing education programs for agents and adjusters through August 31, 1993. By separate rule-making, the Department will establish minimum standards or criteria for the continuing education courses offered by course providers.

Issued in Austin, Texas, on July 19, 1993.

TRD-9326027 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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The State Board of Insurance of the Texas Department of Insurance at a public hearing under Docket Number 2035, scheduled for 9:00 a.m. August 24, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider proposed amendment to §9.1, concerning the adoption by reference of the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual).

The amendment consists of the repeal of procedural rule P-28, concerning general requirements for continuing education of title insurance agents licensed under the Insurance Code, Article 9.36, and escrow officers licensed under Insurance Code Article 9.43. Procedural Rule P-28 also establishes requirements for the implementation of continuing education programs as authorized in the Insurance Code, Article 9.58. The repeal of procedural rule P-28 is necessary for the State Board of Insurance to facilitate the Legislative intent of House Bill 1461. House Bill 1461 was passed by the 73rd Legislature, Regular Session, with an effective date of September 1, 1993, and provides that administration of continuing education programs for agents by the Department is discretionary. House Bill 1461 also makes participation in continuing education programs by agents voluntary, unless continuing education is otherwise required by statute or applicable law.

The amendment of §9.1 will enable the Department to recognize or administer continuing education programs in accordance with provisions of House Bill 1461, which added Article 21.01-2 to the Insurance Code. Procedural rule P-28, paragraph 1, of the Basic Manual, adopted by reference under §9.1 of the rules promulgated by the State Board of Insurance, discusses the purpose and scope of the

continuing education requirements and program for title agents. Procedural rule P-28, paragraph 2, discusses the definition of terms used throughout the rule. Procedural rule P-28, paragraphs 3 and 4, discusses the continuing education requirements for each title agent and escrow officer during the license period, exemptions and extensions of time to complete the continuing education requirements. Procedural rule P-28, paragraph 5, discusses the continuing education requirements for a title agent or escrow officer whose license period is less than the period required in the Insurance Code. Procedural rule P-28, paragraph 6, discusses continuing education course content. Procedural rule P-28, paragraphs 7 and 8, addresses maintenance of continuing education records and the Department's ability to review the books and records of continuing education course providers and title agents. Procedural rule P-28, paragraphs 9 and 10, addresses distribution of the rule to interested parties and the types of forms that correspond to the different filings and registration documents mentioned in the rule.

The amendment, with an effective date of September 1, 1993, will not alter, modify, or eliminate the responsibility of the Department to administer continuing education programs for title agents and escrow officers through August 31, 1993. By separate rulemaking, the Department will establish minimum standards or criteria for the continuing education courses offered by course providers.

Issued in Austin, Texas, on July 19, 1993.

TRD-9326017 Linda K. von Cuiraus-Dom  
Chief Clerk  
Texas Department of Insurance

Filed: July 19, 1993

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**North Central Texas Council of Governments**  
**Request for Proposals**

**Consultant Proposal Request.** This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG is requesting proposals from consultants to provide analysis of alternative alignments and engineering services for proposed extensions of the McKinney Avenue Trolley Authority streetcar line in the city of Dallas. The services of this proposal consist of alternative alignment analysis, final route alignment, related engineering and impact studies, and all services necessary to bring project design to preliminary engineering.

**Contract Award Procedures.** The firm selected to perform this study will be recommended by the Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendation and, if found acceptable, will issue an award of contract.

**Regulations.** NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all

proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, or disability in consideration of an award.

**Due Date.** Proposals must be submitted no later than noon, August 4, 1993, to David Faria, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 640-3300.

Issued in Arlington, Texas, on July 14, 1993.

TRD-9325932 Mike Eastland  
Executive Director  
North Central Texas Council of Governments

Filed: July 16, 1993

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**Public Utility Commission of Texas**  
**Notices of Application to Amend Certificate of Convenience and Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 2, 1993, to amend a Certificate of Convenience and Necessity pursuant to §§16(a), 17(e), 50, 52, and 54 of the Public Utility Regulatory Act. A summary of the application follows.

**Docket Title and Number.** Application of Central Power and Light Company to amend certificated service area boundaries within Karnes County, Docket Number 12145, before the Public Utility Commission of Texas.

**The Application.** In Docket Number 12145, Central Power and Light Company requests approval of its application to revise current certificated service area boundaries with Karnes Electric Cooperative, Inc. in Karnes County.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on July 13, 1993.

TRD-9325776 John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 14, 1993

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Notice is given to the public of the filing with the Public Utility Commission of Texas a joint application on June 23, 1993, to amend Certificates of Convenience and Necessity pursuant to §§16(a), 18(b), 50, 52, and 54 of the Public Utility Regulatory Act. A summary of the application follows.

**Docket Title and Number.** Joint application of GTE Southwest, Inc. and Contel of Texas, Inc. to amend certifi-

ates of convenience and necessity within Parker County, Docket Number 12125, before the Public Utility Commission of Texas.

**The Application.** In Docket Number 12125, GTE Southwest, Inc. and Contel of Texas, Inc. seek approval of the application to amend the exchange area boundary between GTE Southwest, Inc.'s Azle exchange and Contel of Texas, Inc.'s Reno exchange in order to reflect the manner in which telephone service is presently being administered. Specifically, six affected subscribers currently receiving GTE Southwest, Inc.'s Azle exchange service, but residing within Contel's Reno exchange, will be transferred to GTE Southwest, Inc.'s Azle exchange.

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before August 25, 1993.

Issued in Austin, Texas, on July 13, 1993.

TRD-9325775      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 14, 1993

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### Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application for approval of a 90-day waiver of the non-recurring installation charge associated with Central Texas' special calling features pursuant to Public Utility Commission Substantive Rule 23.28.

**Tariff Title and Number.** Application of Central Texas Telephone Cooperative, Inc. for Approval of a 90-Day Waiver of the Non-Recurring Installation Charge Associated with Special Calling Features pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 12157.

**The Application.** Central Texas Telephone Cooperative is requesting approval of a 90-day waiver of the non-recurring installation charge associated with special calling features, beginning September 13, 1993, and ending December 12, 1993. The system-wide promotional offering will be available in all of Central Texas Telephone Cooperative's exchanges.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on July 13, 1993.

TRD-9325774      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: July 14, 1993

## Texas Racing Commission Correction of Error

The Texas Racing Commission proposed amendments to 16 TAC §303.41, concerning Allocation of Race Dates and to §313.502, concerning Application for license. The rules appeared in the June 25, 1993, *Texas Register* (18 TexReg 4170).

In the last paragraph of the preamble to §303.41 the reference to "\$11.01" is incorrect. It should read "\$10.01".

In §313.502(a) the phrase "...an application form..." should read "...an application on a form...."

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### Notice of Changes to Texas Bred Incentive Program Rules for Greyhounds Texas Racing Act, Texas Civil Statutes, Article 179e, §10.04, 10.05

On June 14, 1993, the Texas Racing Commission, Greyhound Racing Section, approved changes to the Texas Bred Incentive Program Rules for greyhounds as promulgated by the Texas Greyhound Association. Pursuant to Texas Civil Statutes, Article 179e, §10.05, the Texas Greyhound Association is the officially designated breed registry for greyhounds in Texas and is authorized to adopt rules to implement the Texas Bred Incentive Program for greyhounds, subject to the approval of the Commission. These rules have been adopted by reference in 16 TAC §303.102 and are on file at the Texas Racing Commission.

A copy of the rules may be obtained by contacting Paula Cochran Carter, General Counsel, Texas Racing Commission, 9420 Research Blvd., Echelon III, Suite 200, Austin, Texas 78759 (512) 794-8461.

Issued in Austin, Texas, on July 14, 1993.

TRD-9325784      Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Filed: July 15, 1993.

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### Teacher Retirement System Request for Proposals

Notice is hereby given to all interested parties that the Teacher Retirement System of Texas (TRS) is soliciting proposals for a project advisor consultant. The consultant will be responsible for providing guidance to staff in the review of business operations and the implementation of technology. TRS has recently engaged a private consultant to present educational seminars for staff on these issues. The consultant must have previous experience with large public pension funds and electronic document imaging systems. Each Proposer is required to submit its qualifications as well as those of the individual to be assigned as Project Manager.

For proposal specifications and requirements please contact Ray Smith, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701, (512) 370-0567.

The deadline for receipt of the sealed proposals in response to this RFP will be 4:30 p.m., CDT, on August 20, 1993. TRS will base its selection on experience, qualifications, cost and compliance of the proposal with the RFP criteria. TRS reserves the right to accept or reject any or all proposals submitted. TRS assumes no legal obligation to enter into a contract on the basis of this request. This RFP does not commit TRS to pay cost incurred prior to execution of a contract. TRS reserves the right to vary provisions set forth at any time prior to the execution of a contract where TRS deems it to be in its best interest to do so.

Issued in Austin, Texas, on July 16, 1993.

TRD-9326014      Wayne Blevins  
Executive Director  
Teacher Retirement System

Filed: July 19, 1993

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## Texas State Treasury

### Bond Counsel Services Proposal Request

The Texas State Treasury (the Treasury) is seeking to employ Co-Bond Counsel for the issuance of certain Tax and Revenue Anticipation Notes and Commercial Paper Notes in an estimated amount of between \$1.3 billion and \$1.8 billion (The Notes). The Notes will be issued pursuant to Subchapter H of Chapter 404 of the Texas Government Code (the Act) and Texas Civil Statutes, Article 717q, to coordinate the State's cash flow within the 1994 fiscal year.

#### I. Proposal Schedule.

Issuance of Request for Proposal—July 16, 1993.

Final Response Date—July 26, 1993—1:00 p.m.

Selection of Co-Bond Counsel—July 29, 1993.

First Working Group Meeting—August 3, 1993—9:00 a.m.

**II. Proposal Submission Deadline.** All proposals must be received no later than 1:00 p.m. on Monday, July 26, 1993. Proposal responses, modifications, or addenda to an original response received by the Treasury after that specified time and date for responses will not be considered. Each proposer is responsible for insuring that the response reaches the Treasury before the proposed due date.

Copies of the Request for Proposal may be obtained by calling or writing Susan D. Albers, Texas State Treasury, 200 East Tenth Street, Suite 309, Austin, Texas 78701, (512) 463-5971.

Issued in Austin, Texas, on July 16, 1993.

TRD-9325929      Susan D. Albers  
General Counsel  
Texas State Treasury

Filed: July 16, 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 agreed enforcement order was issued to Blagburn, Jake (Municipal Solid Waste Unauthorized Site Number 32411) on July 8, 1993, assessing \$36,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2059.

Issued in Austin, Texas, on July 14, 1993.

TRD-9325852      Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 15, 1993

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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 agreed enforcement order was issued to Coastal Refining and Marketing, Inc. (Permit Number 00465) on July 7, 1993, assessing \$250,000 in administrative penalties with \$75,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2261.

Issued in Austin, Texas, on July 14, 1993.

TRD-9325856      Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 15, 1993

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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 agreed enforcement order was issued to Diamond Shamrock Refining and Marketing Company (Solid Waste Registration Number 31553) on July 7, 1993, assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Ballard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8009.

Issued in Austin, Texas, on July 14, 1993.

TRD-9325855      Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 15, 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 Floyd, Jerry (Municipal Solid Waste Unauthorized Site Number 32081) on July 7, 1993, assessing \$55,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8090.

Issued in Austin, Texas, on July 14, 1993.

TRD-9325851 Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 15, 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 agreed enforcement order was issued to Glitsch, Inc. (Solid Waste Registration Number 30848) on July 7, 1993, assessing \$241,280 in administrative penalties with \$80,425 deferred and foregone pending compliance.

Information concerning any aspect of this order may be obtained by contacting Bill Ballard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8009.

Issued in Austin, Texas, on July 14, 1993.

TRD-9325854 Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 15, 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 agreed enforcement order was issued to University of Texas at Austin (No Permit) on June 30, 1993, assessing \$3,080 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 465-2261.

Issued in Austin, Texas, on July 14, 1993.

TRD-9325853 Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 15, 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 agreed enforcement order was issued to Denbow, Ann and Richard Billings (Docket Number 9237-E) on July 7, 1993, assessing \$21,128.27 deferred in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Irene Montelongo, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8080.

Issued in Austin, Texas, on July 12, 1993.

TRD-9325790 Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 14, 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 Clester Frederick doing business as Newtowner Water System (Docket Number 9389-E) on July 13, 1993, assessing \$1,000 in administrative penalties with no amount deferred.

Information concerning any aspect of this order may be obtained by contacting John Carlton, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8072.

Issued in Austin, Texas, on July 16, 1993.

TRD-9325967 Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 16, 1993



## Notice of Application For Municipal Solid Waste Permits

Attached are Notices of Applications for municipal solid waste permits issued during the period of July 12-16, 1993.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the Commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the Commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice con-



cerning the applications, the permit will be submitted to the Commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

City of Post; Post; Type I (landfill) municipal solid waste management facility; on a 32.02 acre site south of the City of Post, 1.2 miles south of the intersection of U. S. Highway 380 and FM Road 669, and 0.25 mile south-southeast of FM Road 669 on White Road in Garza County, Texas; new; MSW2227.

Issued in Austin, Texas, on July 16, 1993.

TRD-9325970

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: July 16, 1993

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**Public Notice**

The Texas Water Commission published in the April 7, 1992, *Texas Register*, the first Priority Enforcement List (PEL) identifying illegal tire sites for which no responsible party had been identified. The following is an update to the first PEL published to delete sites cleaned up. Copies of the PEL can be obtained from the Texas Water Commission, Municipal Solid Waste Division, Waste Tire Recycling Fund Program (WTRF) at 12015 Park 35 Circle, Austin, Texas 78753.

Any questions regarding the implementation or operation of this program should be directed to the staff of the WTRF at (512) 908-6001.

**SITES DELETED**

**PRIORITY ENFORCEMENT LIST**

<u>site #</u>	<u>Rank</u>	<u>County</u>	<u>Name</u>	<u>#Tires</u>
70002	26	LUBBOCK	TIPPER TIRE	10000
70003	33	TOM GREEN	ARMADILLO BATTERY	7000
70004	32	TOM GREEN	CITY OF EDEN LANDFILL	8000
70007	12	TAYLOR	NANCY HILL	5000
70009	40	TITUS	ROY A. RHEA	50000
70011	38	GREGG	DAN JOHNSON ESTATES	3000
70012	32	TOM GREEN	100 ACRE RANCH	50000
70018	27	WISE	PRESTON LOWERY	2500
70019	31	TRAVIS	JESSE REVEILE	2500
70024	40	HARRIS	MARTIN SNEED	150000

70026	0	TRAVIS	GARFIELD TIRE	500000
70027	33	JEFFERSON	SOUTHEAST TX FOOD BANK	1200
70028	38	SMITH	LILLIE MORPHUS	50000
70040	0	BRAZORIA	RAYMOND GREER	2000
70058	0	TARRANT	S. W CORNER: W. LANCASTER	2000
70064	0	GALVESTON	S. H. REED	650
70126	0	TRAVIS	MARY HAYDEN	4000
70131	0	ATASCOSA	ERWIN	200000
70143	16	JIM WELLS	RUEBEN GARCIA	3000
70144	0	WALLER	MARK CRUSH RESIDENCE	450
70178	32	BASTROP	J.B. BAILEY	800
70194	36	GREGG	LEON D. NELMS	1000
70195	34	MIDLAND	U-PULL-IT AUTO SALVAGE	3500
70213	32	HARRIS	P.R. FAYLE	8000
70217	0	LAMB	JAMES JENNINGS	1200
70218	40	WILSON	HARLOH	500000
70219	0	POTTER	FRANKLIN JEFFERS	200000
70224	31	HARDIN	DUPLECHAIN	3000
70225	10	JEFFERSON	JACQUE GARRY	1000
70239	35	HARRIS	EILAN ELEM. SCHOOL	3000
70241	37	LUBBOCK	TEXAS WATER RAMPAGE	750
70250	34	TRAVIS	HILLIS	6000
70255	28	WALKER	TDCJ ELLIS 1	1200
70256	35	BRAZORIA	TDCJ RAMSEY 1	5000
70260	0	HARRIS	CARRUTHERS	1045

70266	31	JEFFERSON	CITY OF BEAUMONT/POLICE PISTON	7000
70268	22	BASTROP	TORREZ PROPERTY	3000
70275	27	TAYLOR	CARL JONES	8000
70279	36	LUBBOCK	JULIE RAY	700
70280	32	HARRIS	LONDON	1000
70283	32	HARRIS	E. AVENUE L	600
70292	32	BEE	ROSALEE EISSLER	4500
70295	0	NUECES	GREGORY TSCHOEPE	5000
70309	31	HARRIS	EDGECREST	8000
70343	36	DALLAS	CLYDE L. HARGROVE	125000
70349	28	HARRIS	DERTMAN ROBINSON	700
70425	35	JACKSON	L. C. PREGEN	2500

Issued in Austin, Texas on July 19, 1993.

TRD-9326031

Mary Ruth Holder  
 Director, Legal Division  
 Texas Water Commission

Filed: July 19, 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 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 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.
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 Thursday, 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	

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues requested. Each copy of a back issue is \$5 including postage. You may use your Mastercard or Visa to purchase back issues or subscription services. To order by credit card, please call the *Texas Register* at (512) 463-5561. All purchases made by credit card will be subject to an additional 2.1% service charge. For more information, please write to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824 or call (512) 463-5561.

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*(Please print)*

**Back Issues Requested**  
*(Please specify dates)*

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**YES**, I want to learn about the latest changes in Texas regulations that may affect the daily operation of my business. Please begin my subscription to the *Texas Register* today.

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Organization .....

Address .....

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*7 week trial subscription not available for electronic subscriptions*  
 Bill me for  1 year  6 months

Cost of a subscription is \$90 yearly or \$70 for six months for the electronic version. Cost for the printed version is \$95 yearly or \$75 for six months. Trial subscriptions cost \$14. Please make checks payable to the Secretary of State. Subscription fees will not be refunded. Do not use this form to renew subscriptions. Return to *Texas Register*, P.O. Box 13824 Austin, TX 78711-3824. For more information, please call (512) 463-5561.

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