

Texas Register

Volume 18, Number 70, September 14, 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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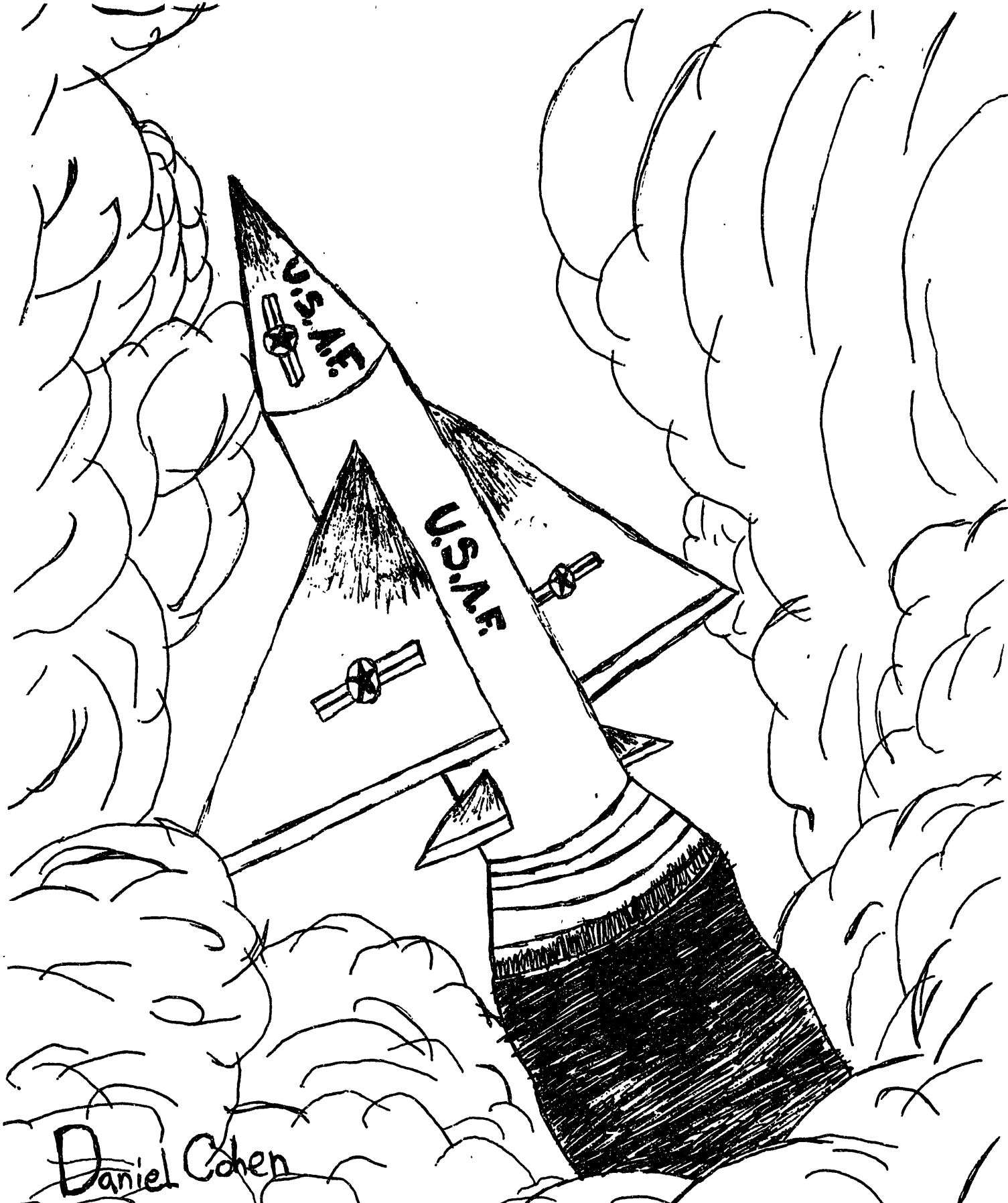
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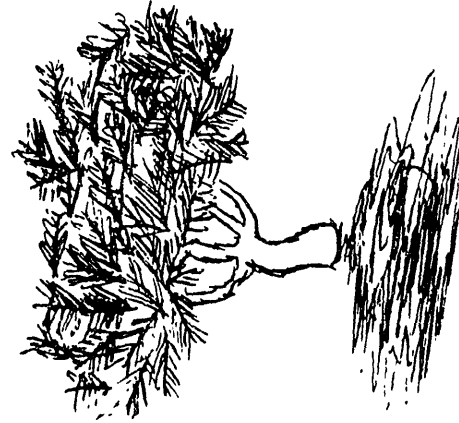


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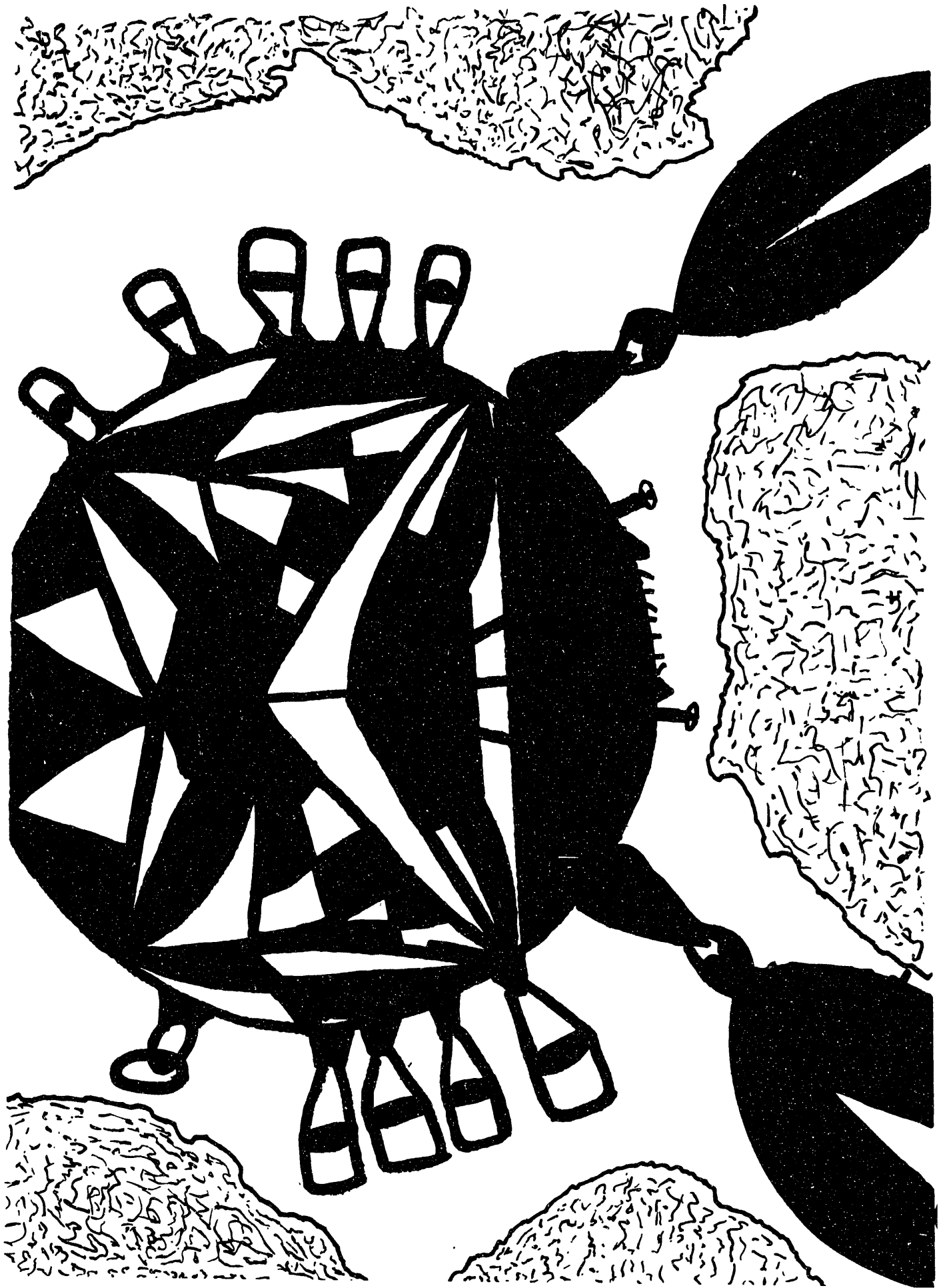


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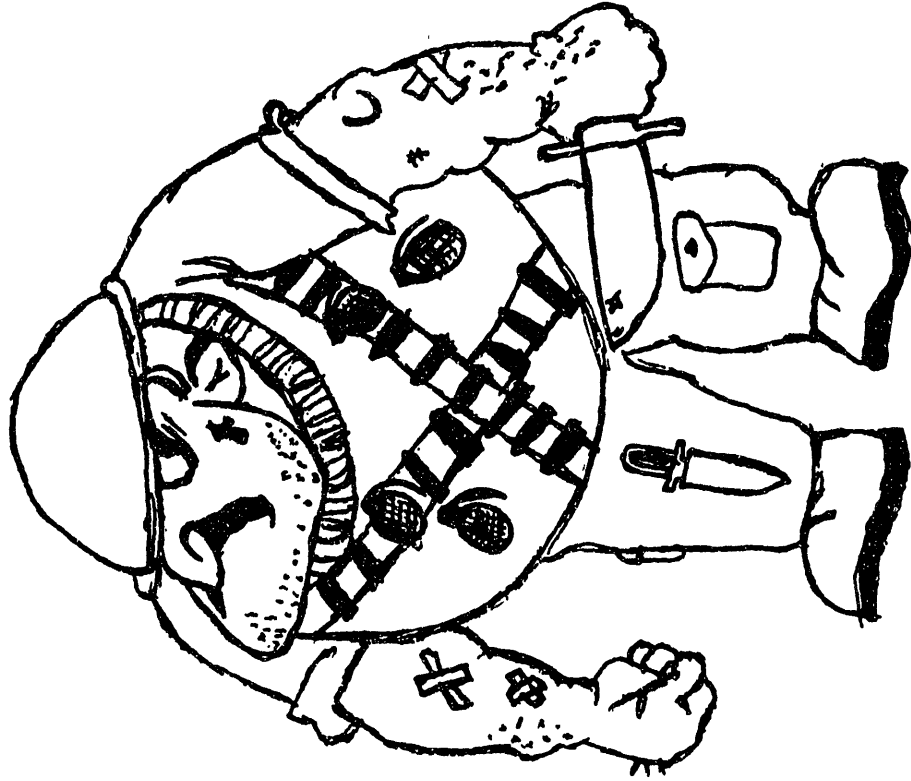


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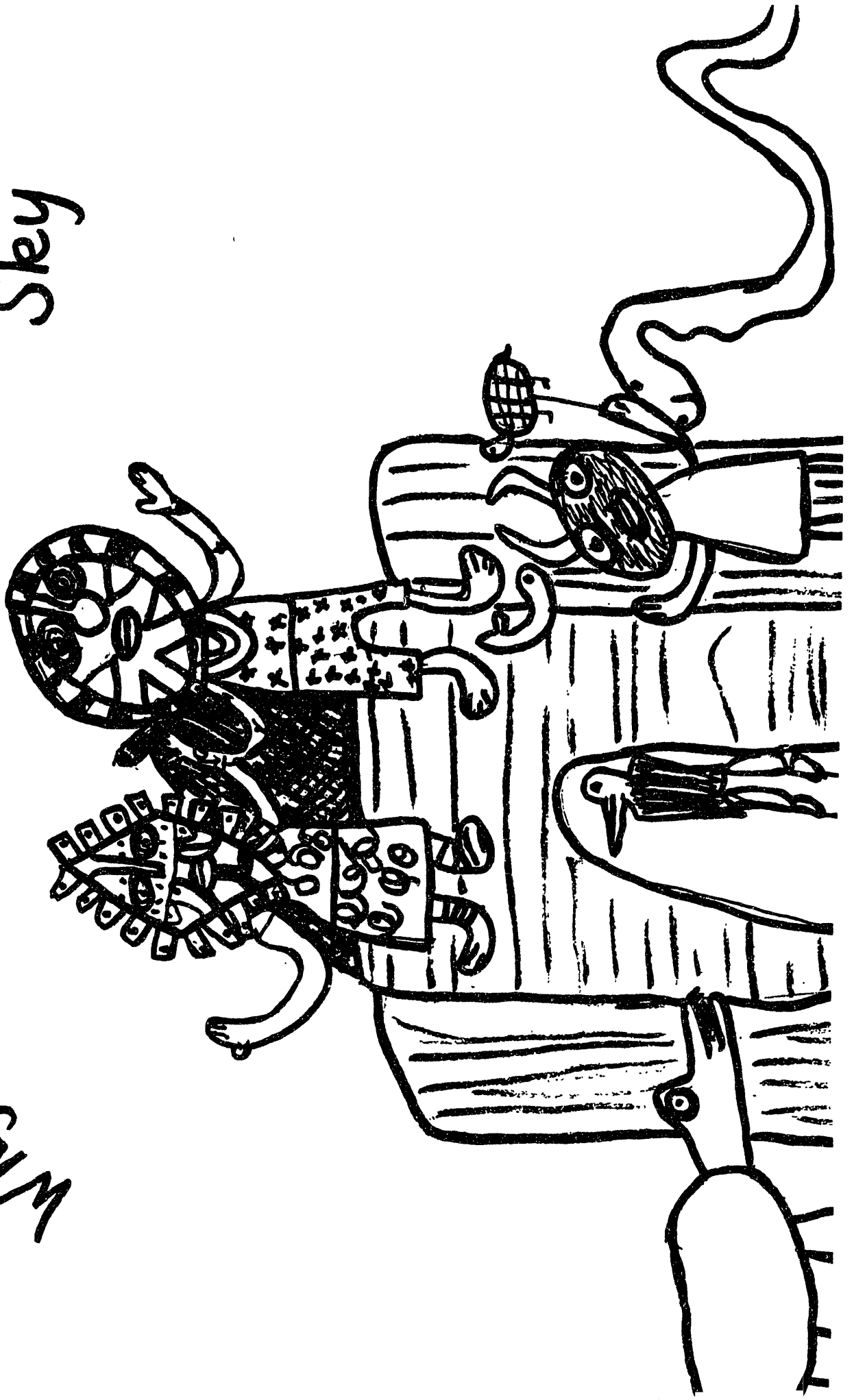
U.S. General George Patton



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Alex

the SUN and MOON
live in the
Sky



Emergency Sections

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing, for no more than 120 days. The emergency action is renewable once for no more than 60 days.

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

TITLE 1. ADMINISTRATION

Part X. Department of Information Resources

Chapter 201. Planning and Management of Information Resources Technologies

• 1 TAC §§201.5, 201.9, 201.13

The Department of Information Resources adopts on an emergency basis amendments to §§201.5, 201.9, and 201.13, concerning the planning and management of information resources technologies.

The sections describe the procedures for review of analyses of project acquisition alternatives, review of acquisition specifications, and information resources standards and policies.

The sections adopted on an emergency basis are simultaneously proposed for public comment in this issue of the *Texas Register*. The sections are adopted on an emergency basis to ensure all necessary rules comply with the provisions of legislation enacted by the 73rd Legislature, Regular Session.

The sections are adopted on an emergency basis under Texas Revised Civil Statutes, Article 4413(32j), §9(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

§201.5. Agency Planning.

(a)-(e) (No change.)

(f) Review of State Agency Analyses of Project Acquisition Alternatives.

(1) Applicability.

(A) (No change.)

(B) The [Through August 31, 1993, the] provisions of this subsection shall only apply to any state agency specified in Article V, §96(6) of the General Appropriations Act [with the general appropriation rider entitled "DIR Review Required"].

(2)-(5) (No change.)

§201.9. *Board Policies [Review of Acquisition Specifications for Information Resources under Article 4413(32j), §18].*

[(a) Applicability.

[(1) Specification review is required for state agency acquisitions of information resources estimated to meet or exceed the following dollar amounts within one fiscal year for any single procurement or set of related procurements comprising a single project as described in an agency's initial or final operating plan:

[(A) \$50,000, including all related procurements but excluding internal development costs, for a state agency with 99 or fewer full-time equivalent employees;

[(B) \$100,000, including all related procurements but excluding internal development costs, for a state agency with more than 99 and fewer than 500 full-time equivalent employees;

[(C) \$250,000, including all related procurements but excluding internal development costs, for a state agency with more than 499 and fewer than 1,000 full-time equivalent employees;

[(D) \$500,000, including all related procurements but excluding internal development costs, for a state agency with 1,000 or more full-time equivalent employees.

[(2) Specification review is also required for state agency acquisitions of information resources:

[(A) meeting any of the following criteria, subject to the estimated dollar amounts established by agency size as determined in paragraph (1) of this subsection:

[(i) geographic information systems;

[(ii) information resources services contracts related to programming;

[(iii) wide area network implementations or expansions;

[(iv) system conversions consisting of conversion of one hardware

system, operating system, or application system, including a data base management system, to another;

[(v) statewide or interagency application implementations or expansions;

[(vi) imaging system implementations or expansions; or

[(vii) proprietary or sole-source acquisitions, except for routine upgrades for existing information resources technology previously approved in the appropriate operating plan;

[(B) for all proposals, regardless of cost, subject to additional review as stipulated by the department in approvals for operating plans; or

[(C) for information resources services contracts, with a contract cost of at least \$10,000, including those subject to Texas Civil Statutes, Articles 664-4 and 6252-11c, related to: information resources project planning, design, management, conversion, documentation, training, implementation, or development; selecting systems development methodologies or other information resources technology tools; and supporting disaster recovery.

[(3) An agency's size is determined by the number of full time employees reported for the quarter ending in May, in the prior fiscal year's Quarterly Report of Full Time Equivalent State Employees, published by the Classification Division of the Office of the State Auditor.

[(4) A state agency shall not subdivide an acquisition to avoid specification review by the department.

[(b) Submittal procedures.

[(1) When a state agency has completed its specifications to purchase, lease, or otherwise incur a contractual obligation to a private, non-governmental entity meeting criteria established in subsection (a) of this section, it shall file its specifications with the department. In the interest of efficient and expeditious review, the department also requires the agency to submit information concerning the specification to the department on a Specification Transmittal Form provided by the department.

[(2) The specifications and the Specification Transmittal Form must be submitted by the agency head or information resources manager.

[(3) Submissions of the Specification Transmittal Form must comply with instructions published by the department and distributed to each state agency.

[(A) The Specification Transmittal Form shall contain the following minimum information in the format defined by the department for acquisitions meeting the provisions of paragraph (a)(1) of this section: category of procurement, method of acquisition, source of funds, terms of financing, a specification for new or used equipment, a description of technical specification and configuration and individual item and total project cost information.

[(B) The Specification Transmittal Form shall also contain the following information in the format defined by the department for acquisitions meeting the provisions of paragraph (a)(2) of this section: updated statements of need, performance objectives, and the cost benefit analysis of alternative solutions.

[(C) The Specification Transmittal Form shall be submitted to satisfy requirements for additional information under provisions of §201.5(f) of this title (relating to Agency Planning).

[(4) Specifications and the Specification Transmittal Form must be submitted to the department at least 30 days before the procurement is executed, except under provisions established in subsection (d)(1) and (d)(2) of this section. Specifications for open market procurements that must be processed by the State Purchasing and General Services Commission may be submitted no later than May 1 of that fiscal year; specifications for procurements that are not processed by the State Purchasing and General Services Commission may be submitted no later than July 15 of that fiscal year.

[(c) Review procedures.

[(1) The department will evaluate specifications and the Specification Transmittal Form for consistency with the agency final operating plan as determined by:

[(A) conformance with administrative rule, the State Strategic Plan for Information Resources Management, statewide standards, and board policies as contained in subsection (e) of this section;

[(B) completeness based on published instructions; and

[(C) cost-effective implementation of information resources technologies.

[(2) For the purpose of applying this Section to procurements processed from the effective date of this section until the due date of the first agency final operating plan under §201.5(c) of this title (relating to Agency Planning), the department will consider an approved initial operating plan to be a final operating plan.

[(3) Within 10 days after initial receipt of the specification and the Specification Transmittal Form, the department shall, with reasonable specificity, notify the submitting state agency of all supporting or other information the department requires to conduct its review. The date of receipt of the specification is either the initial date of arrival of the proposal, or the date that any supporting or other information, if requested, is received. Review shall commence on the date of receipt.

[(4) The department shall review each specification and the Specification Transmittal Form and shall, within 30 days after the date of its receipt, notify the state agency and, for acquisitions made through the State Purchasing and General Services Commission, the commission in writing whether or not the acquisition may be completed. Upon completion of its review, the department will forward the specification to the State Purchasing and General Services Commission or return it to the agency for further action. If the department does not act within the time allowed, the acquisition may be completed.

[(5) An agency may appeal to the board, under provisions of §201.5(e), any acquisition disapproved by the department.

[(d) Exemptions.

[(1) A state agency may procure information resources without first complying with the procedures prescribed by this section if the agency finds that a situation caused by fire, natural disaster, or other actual emergency requires the action to be taken. The agency must report and explain to the department any emergency action within 30 days after the action is taken.

[(2) An institution of higher education as defined by the Education Code, §61.003, is not required to submit for departmental approval procurements or purchase specifications for information technologies that are acquired through contracts and grants for instruction or research purposes.

[(e) Board policies.]

[(1)] The executive director is hereby delegated authority by the board to grant a requesting state agency a compli-

ance waiver from administrative rule, statewide standards, or other board policies [in this subsection (e)]. A state agency may request a compliance waiver from administrative rule, statewide standards or other board policy. The agency must clearly demonstrate to the department through written justification any performance or cost advantages to be gained and that the overall economic interests of the state are best served by granting the compliance waiver. The [department will act on requests for waivers under provisions of subsection (c) of this section, with the additional procedure that the] executive director of the department will notify the board when requests for waivers are received. [Any agency to which a waiver is granted must report procurements obtained under the waiver in its annual performance report to the department.]

[(2) Interagency transfers of information resources technology and sharing applications. When a state agency proposes an information resources acquisition, the agency and the department will investigate the availability of the proposed technology or application from another agency. A state agency must notify the department of intent to replace and/or dispose of equipment with a fair market value of at least \$15,000 prior to completing the disposition and prior to completing specifications and the Specification Transmittal Form subject to subsection (a) of this section.

[(3) Geographic information systems. A state agency must notify the department of any proposed action to implement a final operating plan by purchases of data files, and acquisition or enhancements of geographic information systems at an estimated value of \$15,000 or more, prior to the completion of acquisition specifications. The department shall use information obtained through this notification procedure to establish and maintain a registry of information concerning existing and proposed geographic information systems installations and geographic related databases to promote statewide coordination and interagency cooperation in the use of this technology.

[(4) Used equipment. Agencies shall solicit remanufactured or used information resources technology when proposing acquisitions, if available and economical, and performance requirements of the agency may be met over the life of the technology. The cost-effectiveness of maintenance services for the proposed information technology acquisition may be considered in the analysis of alternatives.

[(5) Information Resources Services. A state agency may acquire information resources services subject to Texas Civil Statutes, Articles 664-4 and 6252-11c, from an individual or a private firm under subsection (a)(2)(C) of this section when the following criteria are met:

[(A) where services are required on an intermittent or temporary basis within a fiscal year, or for repeated or extended arrangements beyond a single fiscal year under extraordinary circumstances;

[(B) where state or federal legislation mandates projects or deadlines that cannot be achieved otherwise, or where other time constraints are critical;

[(C) where services, special knowledge or skills are not available internally or from another agency as cost-effectively; or;

[(D) where system integration projects span multiple agencies, environments, and/or platforms.]

§201.13. Information Resource Standards and Policies.

(a) Geographic Information Systems Standards.

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

(4) Submittal procedures. The agency Information Resource Manager (IRM) will certify that Geographic Information Systems development in the agency adheres to the "Standards and Guidelines for Geographic Information Systems in the State of Texas." [The annual certification will be submitted to the department.]

(5) (No change.)

(b) Information security standards.

(1) Applicability. The following rule constitutes required minimum security standards for the protection of automated information resources for agencies of the state of Texas. The department requests each agency to complete implementation of an information resources security program consistent with these standards on or before September 1, 1997, in accordance with the implementation schedule of paragraph (12) of this section. Beginning with the agency information resources strategic plan to be submitted on January 1, 1993, agencies shall include in each biennial strategic plan for information resources an overview of their current information security posture and their future plans for completing development of a security program, consistent with these standards and implementation schedule, over each current strategic planning cycle. [Completed implementation actions shall be reported to the department in agency annual performance reports.] To assist in the interpretation and implementation of these standards, the department has developed the Information Resources Security and Risk Management Policy, Standards

and Guidelines manual which is available on request from the Department of Information Resources, P.O. Box 13564, Austin, Texas 78711.

(2)-(12) (No change.)

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

Issued in Austin, Texas, on September 2, 1993.

TRD-9328261

Ann S. Fuelberg
Executive Director
Department of Information
Resources

Effective date: September 2, 1993

Expiration date: January 1, 1994

For further information, please call: (512) 475-4700

◆ ◆ ◆
• 1 TAC §201.7

The Department of Information Resources repeals on an emergency basis §201.7, concerning agency annual performance reports for information resources technologies. The section describes the submittal procedures and contents for the annual performance reports.

The section repealed on an emergency basis is simultaneously proposed for public comment in this issue of the *Texas Register*. The section is repealed on an emergency basis to ensure compliance with the provisions of Senate Bill 381, enacted by the 73rd Legislature, Regular Session, effective June 19, 1993.

The section is repealed on an emergency basis under Texas Civil Statutes, Article 4413(32), §9(a), which authorize the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

Issued in Austin, Texas, on September 2, 1993.

TRD-9328262

Ann S. Fuelberg
Executive Director
Department of Information
Resources

Effective date: September 2, 1993

Expiration date: January 1, 1994

For further information, please call: (512) 475-4700

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TITLE 22. EXAMINING BOARD

Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 151. Practice and Procedure

- 22 TAC §§151.1, 151.6, 151.11, 151.12, 151.15, 151.17, 151.18, 151.19, 151.22, 151.27, 151.28

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis amendments to §§151.1, 151.6, 151.11, 151.12, 151.15, 151.17, 151.18, 151.19, 151.22, 151.27, and 151.28, concerning practice and procedure for the licensing and certification of real estate appraisers.

The amendments are adopted on emergency basis to conform the rules to the Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 8573a.2) as amended by House Bill-2644, 73rd Legislature, Regular Session, 1993, to conform with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 United States Code, §3331, et seq), to conform to other state laws, and to make technical and consistency corrections.

The Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 8573a.2) provide the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

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

Act-The Texas Appraiser Licensing and Certification Act.

§151.6. Motions for Postponement, Continuance, Withdrawal, or Dismissal. Motions for postponement, continuance, withdrawal, or dismissal of matters which have been duly set for hearing shall be in writing and shall be filed with the board not less than five [(5)] days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding.

§151.11. Request for Comments; Hearing; Explanation of Board Action.

(a) The commissioner shall review and make recommendations to the board concerning the adoption of rules relating to:

(1) the licensing and certification examination;

(2) education and experience requirements for licensing and certification;

(3) continuing education for a licensed or certified appraiser;

(4) standards of professional practices and ethics for a licensed or certified appraiser;

(5) standards for a real estate appraisal performed by a licensed or certified appraiser; and

(6) the fees to be established by the board to be charged for the implementation of the Act.

(b) Prior to the adoption of any rule, all interested persons shall have reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, a public hearing shall be granted if requested in writing by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members; the request must be duly filed with the board within 15 days after publication of the notice of intent. All written and oral submissions concerning the proposed rule shall be considered fully. On the adoption of a rule, the board, if requested in writing by any interested person prior to or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reason for overruling the considerations urged against its adoption. Once adopted, the commissioner shall administer the rules.

§151.12. Emergency Rules. The board may adopt emergency rules under the Texas Government Code, §2001.034 without prior notice or hearing, if it finds that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days notice and states in writing its reason for that finding. The rule may be effective for a period not longer than 120 days, renewable once for a period not exceeding 60 days. An emergency rule adopted pursuant to this rule and the board's written reasons for the adoption shall be filed in the office of the Secretary of State.

§151.15. Denial of a License. If the board denies a certification or license to an applicant under the Act, the board immediately shall give written notice of the denial to the applicant. Notice and hearings relating to denial of a license issued by the board shall be governed by the Act [Texas Appraiser Licensing and Certification Act] and by the Texas Government Code, §2001.001 et seq [Texas Civil Stat-

utes, Article 6252-13a]. In the case of an application for approval as an appraiser trainee the board shall also notify a sponsoring certified or licensed appraiser of the denial, but a sponsoring appraiser is not required to request a hearing or to be named or admitted as a party in the proceeding before the board. A hearing pursuant to this section shall be held at a place designated by the board. Failure to request a hearing timely waives judicial appeal, and the board determination becomes final and unappealable.

§151.17. Notice of Hearing.

(a) The notice of hearing shall be served by personal service or certified mail return receipt requested not later than the 30th day before [less than ten days prior to] the date set for the hearing. The notice must include a statement of the time, place, and nature of the hearing; a statement of charges; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted, or, if the board 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, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing. The statement of charges shall be prepared by the prosecuting attorney and must state the acts or omissions which the appraiser is charged, including the standards of professional practice or professional conduct rules alleged to have been violated. The statement must be in sufficient detail to enable the preparation of the appraiser's defense.

(b) The notice must contain a statement requiring the appraiser to submit an answer not later than the 20th day after the date of receipt of the notice. The answer filed by the appraiser must contain:

(1) the name, address, and telephone number of the appraiser;

(2) a specific statement regarding any or all allegations in the complaint in the form of admissions or denials and containing any explanations, remarks, or statement of mitigating circumstances the appraiser determines to be relevant; and

(3) any additional facts or information the appraiser determines to be relevant to the investigation and that may assist in the determination of the case.

(c) The notice prepared by the board shall be reviewed and approved by

the attorney general. The attorney general shall provide legal representation for the public interest in all proceedings before the board. An assistant attorney general assigned to prosecute a contested case before the board may not represent the board in that case but shall represent the public interest.

§151.18. Hearings Before the Board.

(a) A contested case hearing may be conducted before a majority of the board members and shall be open to the public. The board may provide for an administrative law judge to act as presiding officer to conduct the hearing for the board. The designated presiding officer shall be in control of the proceedings and may administer oaths, admit or exclude testimony or other evidence, and rule on all motions and objections. The presiding officer or other board members may conduct direct examination of the witnesses at any stage of the witness's testimony. Contested proceedings shall be recorded either by mechanical or electrical means or by a certified shorthand reporter. The proceedings or part of the proceedings shall be transcribed at the request of any party, with the expense of transcription charged to the requesting party. The recording, stenographic notes, or transcription of oral proceedings shall be filed with and maintained by the board for not less than five years from the date of the division in the proceedings. [The chairman of the board or a member designated by the chair shall preside over hearings conducted by the board. The chairman of the board or a member designated by the chairman for that purpose shall rule on the admissibility of evidence or amendments to pleadings.]

(b) The board and presiding officer may conduct a hearing or enter an order or judgment as the board determines appropriate for an appraiser who received proper notice of the hearing but who fails to appear in person at the hearing. The appraiser shall be bound by the results of the hearing to the same extent as if the appraiser had appeared.

(c) Before testimony may be presented in a contested case hearing, the record must show the identities of the board members present, of the presiding officer, and of the parties and their representatives and must reflect that all testimony is being recorded. The appraiser who is the subject of the proceeding may challenge any member of the board for cause before the commencement of the hearing. The members of the board, with the challenged member abstaining, shall decide by a majority vote whether cause exists for the challenge and whether the challenged member may participate in the hearing. The board shall set dates,

time, and rules for hearings and shall rule on all issues. Hearings shall be conducted in the following order, subject to modification at the discretion of the board:

(1) the presiding officer shall read a summary of the charges and answers to the charges and other responsive pleadings filed by the appraiser before the hearing;

(2) the assistant attorney general representing the public interest before the board shall make a brief opening statement, including a summary of charges and the witnesses and documents to support the charges;

(3) the appraiser may make an opening statement, including the names of any witnesses the appraiser may call;

(4) evidence shall be presented for the state, including a summary made at the close of the evidence on behalf of the state;

(5) evidence shall be presented for the appraiser;

(6) rebuttal evidence may be presented for the state;

(7) rebuttal evidence may be presented for the appraiser; and

(8) closing arguments are made first for the state, then for the appraiser, and finally for the state on rebuttal.

(d) The presiding officer may grant immunity from disciplinary action before the board to a witness only on the unanimous vote of all members of the board hearing the case. The official record of the hearing must include the reasons for granting the immunity.

(e) Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies shall also be provided to members of the board. To the extent the appraiser believes the appraiser is being asked to reply to accusations, charges, innuendoes, or facts for the first time in the hearing, the appraiser may respond to the evidence to the board either in writing or at a subsequent scheduled meeting of the board. However, the assistant attorney general assigned to prosecute the case before the board shall be allowed to continue to present evidence during the hearing.

(f) By a majority vote of the members hearing the contested matter, the board shall make findings of fact and conclusions of law and may take one or more of the following actions:

(1) dismissal of the charges, including an order that the file in the case is confidential;

(2) suspension or revocation of the appraiser's license or certification;

(3) imposition of a period of probation with or without conditions;

(4) a requirement that the appraiser submit to reexamination for licensing or certification as an appraiser;

(5) a requirement that the appraiser participate in additional professional education or continuing education;

(6) issuance of a public or private reprimand or a warning;

(7) issuance of a consent order; or

(8) imposition of an administrative penalty, the amount of which shall be set at the discretion of the board at an amount not to exceed \$1,000 for each violation or \$5,000 for multiple violations in one hearing, to be paid not later than the 20th day after the date of final disposition of the case.

(g) A member of the board is entitled to quasi-judicial immunity from suit for actions as a member of the board, provided the actions are in compliance with the law.

§151.19. Limitations on Number of Witnesses. The chair [chairman] of the board or member designated by the chair [chairman] shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§151.22. Subpoenas; Depositions; Discovery. The issuance of subpoenas and commissions and the taking and use of depositions in a contested case shall be governed by the Texas Government Code, §§2001.081-2001.103 [Texas Civil Statutes, Article 6252-13a, §14]. Commissions [Subpoenas and commissions] may be issued by the chair [chairman] or a member designated by the chair [chairman]. The commissioner shall issue subpoenas for books, papers, records, witnesses, or other evidence on reasonable cause shown after a verbal or written request specifying the documents sought and full names and addresses of the witnesses sought is made. Discovery procedures applicable to a civil action are available to the parties in the proceeding under the Act. A party or the board may petition the district court for its enforcement of a subpoena.

§151.27. Final Decisions and Orders. A final decision or order adverse to a party in a contested case must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law,

separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by certified mail, return receipt requested [first class mail] of any decision or order. When the board issues a final decision or order ruling on a motion for rehearing, the board shall send a copy of that final decision or order by certified mail, return receipt requested [first class mail] to the attorneys of record and shall keep an appropriate record of that mailing. If a party is not represented by an attorney of record, then the board shall send a copy of a final decision or order ruling on a motion for rehearing by certified mail, return receipt requested [first class mail] to that party, and the board shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision or order as required by this section shall be presumed to have been notified on the date such notice is mailed. A final decision must be rendered within 60 days after the date the hearing is finally closed. The final decision of the board shall be filed with the commissioner. Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders, may be transmitted to other states and made available to the public.

§151.28. Finality of Decisions.

(a) Not later than the 20th day after the day of issuance of a final decision, a party may file an application with the board for a rehearing stating the specific grounds for rehearing and the relief sought. The application shall be denied if it is not granted before the 20th day after the date of service on the commissioner of the board. The decision made on the conclusion of the original proceeding may not be reversed or modified for procedural, evidentiary, or other error that did not cause substantial injustice to the parties. The decision made on a rehearing may incorporate by reference any or all parts of the decision made at the conclusion of the original proceeding. On rehearing, the board shall consider facts not presented in the original proceeding if:

(1) the facts arose after the original proceeding was concluded;

(2) the party offering the evidence could not reasonably have provided the evidence at the original proceedings; or

(3) the party offering the additional evidence was misled by any party as to the necessity for offering the evidence at the original proceeding.

(b) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date of rendition of the order overruling a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law. A decision is final and appealable on the date rendered if the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect, in which event the decision or order shall recite the finding and the fact that the decision is final and effective on the date rendered.

Issued in Austin, Texas, on September 3, 1993.

TRD-9328428

Renli C. Liner
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: September 7, 1993

Expiration date: January 6, 1994

For further information, please call: (512) 485-3950



Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

- 22 TAC §§153.1, 153.3, 153.5, 153.7, 153.9, 153.11, 153.13, 153.15, 153.17, 153.19, 153.20, 153.21, 153.25, 153.27, 153.29, 153.31, 153.33, 153.35, 153.37

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis amendments to §§513.1, 153.3, 153.5, 153.7, 153.9, 153.11, 153.13, 153.15, 153.17, 153.19, 153.20, and 153.21, and new §§153.25, 153.27, 153.29, 153.31, 153.33, 153.35, and 153.37, concerning the licensing and certification of real estate appraisers.

The amendments and additions are adopted on an emergency basis to conform the rules to the Texas Appraiser Licensing and Certification Act as amended by House Bill-2644, 73rd Legislature, Regular Session, 1993, to conform with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. Section 3331, et seq), to conform to other state laws, and to make technical and consistency corrections.

The amendments and additions help permit real estate appraisers to become licensed or certified in Texas and thereby eligible to appraise real property for federally-related transactions in compliance with the federal Title XI of the Financial Institutions Reform,

Recovery, and Enforcement Act of 1989 (FIRREA).

The Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 6573a.2) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

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

Act—The Texas Appraiser Licensing and Certification Act.

Analysis—The act or process of providing information, recommendations, or conclusions on diversified problems in real estate other than estimating value.

Applicant—A person seeking to be certified or licensed as an appraiser or approved as an appraiser trainee.

Appraisal—A written statement used in connection with a federally-related transaction that is independently and impartially prepared by a licensed or certified appraiser that states an opinion of the defined value of an adequately described property as of a specific date that is supported by the presentation and analysis of relevant market information.

Appraisal Standards Board—The Appraisal Standards Board (ASB) of the Appraisal Foundation or its successor.

Appraisal Subcommittee—The Appraisal Subcommittee of the Federal Financial Institutions Examination Council or its successor.

Appraiser Qualifications Board—The Appraiser Qualifications Board (AQB) of the Appraisal Foundation or its successor.

Appraiser trainee—A person approved by the Texas Appraiser Licensing and Certification Board to perform appraisals under the direction of a sponsoring certified [or licensed] appraiser.

Board—The Texas Appraiser Licensing and Certification Board.

Classroom hour—Fifty minutes of actual classroom session time.

Client—Any party for whom an appraiser performs a service.

College—A junior or community college, senior college, university or any other post-secondary educational institution established by the Texas Legislature, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or is a candidate for such accreditation.

Commissioner—The commissioner of the Texas Appraiser Licensing and Certification Board.

Council—The Federal Financial Institutions Examination Council (FFIEC) or its successor.

Feasibility analysis—A study of the cost-benefit relationship of an economic endeavor.

Federally-related transaction—Any real estate-related transaction engaged in, contracted [contract] for, or regulated by a federal financial institution regulatory agency or the Resolution Trust Corporation that requires the services of an appraiser.

Foundation—The Appraisal Foundation or its successor.

Nonresidential property—A property which does not conform to the definition of residential property.

Person—An individual.

Personal property—Identifiable portable and tangible objects which are considered by the general public as being "personal," for example, furnishings, artwork, antiques, gems and jewelry collectibles, machinery, and equipment.

Real estate—An identified parcel or tract of land, including improvements, if any.

Real estate-related financial transactions—Any transaction involving: the sale, lease, purchase, investment in, or exchange of real property, including an interest in property or the financing of property; the financing of property or an interest in real property; or the use of real property or an interest in real property as security for a loan or investment including a mortgage-backed security.

Real property—The interests, benefits, and rights inherent in the ownership of real estate.

Report—Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

Residential property—Property that consists of at least one but not more than four residential units.

Review—The act or process of critically studying a report prepared by another.

State certified real estate appraiser—A person certified under the Texas Appraiser Licensing and Certification Act.

State-licensed real estate appraiser—A person licensed under the Texas Appraiser Licensing and Certification Act.

§153.3. The Board.

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

(c) Meetings of the board may be called by the chair [chairman] on a motion by the chair [chairman] or upon the written request of five members. Meetings shall be conducted in accordance with Robert's Rules of Order.

(d) Officers of the board shall consist of a chair [chairman], a vice-chair [vice-chairman] and a secretary who together form the executive committee. The board shall elect its officers at the February meeting or upon creation of a vacancy in an office, whichever first occurs.

(e) Terms of office for members of the board are established when the members are appointed by the governor as provided by the Act [Texas Appraiser Licensing and Certification Act (the Act)], and members shall continue to serve until their successors are qualified. The appointed members of the board shall hold office for terms of two years, for no more than three consecutive two-year terms. Two appraiser members and two public members shall serve terms that expire on January 31 of each odd-numbered year. Two appraiser members and two public members shall serve terms that expire on January 31 of each even-numbered year. An appointed member qualifies by taking the constitutional oath of office within 15 days after appointment.

(f) The board shall maintain a roster of individuals who have received a state certification or a state license under the Act. The roster must include the type of license or certification for each individual listed. The board shall transmit to the Appraisal Subcommittee at least annually, a copy of the roster.

§153.5. Fees.

(a) The board shall charge and the commissioner shall collect the following fees:

- (1) an application fee for certification or licensing of \$125;
- (2) an examination fee of \$50;
- (2)[(3)] a renewal fee for a certificate or license of \$100;
- (3)[(4)] an application fee for approval as an appraiser trainee of \$50;
- (4)[(5)] a renewal fee for appraiser trainee approval of \$25;
- (5)[(6)] a fee for notifying the board of a change of office location of \$10;
- (6) [(7)] a fee for nonresident appraiser registration of \$25; [and]
- (7)[(8)] an [a] annual federal registry fee of \$25;
- (8) an application fee by reciprocity set at the amount of the fee charged in the appraiser's state of present licensure or certification;
- (9) a fee for providing each licensure history of \$10;
- (10) a fee for an addition or termination of sponsorship of an appraiser trainee of \$20; and

(11) a fee for replacing a lost or destroyed certificate of \$15.

(b) (No change.)

(c) Appraisers certified or licensed by the board shall pay any annual registry fee required under federal law within 30 days after the board mails a written request for payment of the fee to the appraiser's last known business address as shown in the board's records. If, however, the board requests payment of the registry fee in connection with renewal of a certification or license, the registry fee must be paid at the same time as the fee for certification or license renewal. All registry fees collected by the board shall be deposited in the state treasury to the credit of a special fund to be known as the appraiser registry fund. The board shall send the fees to the council as required by federal law.

§153.7. Categories of Appraiser Certification.

(a) There is hereby created the category of state-certified general real estate appraiser. To be eligible for certification as a state-certified general real estate appraiser an applicant must meet the requirements for general certification set by these sections and the Act [Texas Appraiser Licensing and Certification Act (the Act)].

(b) (No change.)

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser or approved as an appraiser trainee shall file an application using forms prescribed by the board; provided, however, forms may be accepted so long as the applicant satisfies current requirements for certification or licensing. The commissioner shall review the application and make a recommendation for final action to the board. The board may decline to accept for filing an application which is materially incomplete or which is not accompanied by the appropriate fee. Except as provided by the Act [Texas Appraiser Licensing and Certification Act (the Act)] the board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

- (1) pays the fees requested by the board;
- (2) satisfies any experience and education requirements established by the Act or by these sections;
- (3) successfully completes any qualifying examination prescribed by the board; and
- (4) provides all supporting documentation or information requested by the board in connection with the application.

(b) The Texas Appraiser Licensing and Certification Board adopts by reference

the following forms approved by the board in 1991 and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1) TALCB Form 1.2 [1.1], Application for Appraiser Certification or Licensing and Examination.

(2) TALCB Form 2.2 [2.1], Appraisal Experience Affidavit;

(3) TALCB Form 3.2 [3.1], Appraisal Experience Log;

(4) TALCB Form 4. 3 [4.2], Application for Approval as an Appraiser Trainee.

(5) TALCB Form 5.0, Request for Course Approval and Renewal; [and]

(6) TALCB Form 6.1 [6.0], Temporary Non-Resident Appraiser Registration; []

[(7) TALCB Form 7.0, Joint Affidavit for Experience; and]

[(7)[(8)] TALCB Form 8.0, Change of Office Address by a Licensed or Certified Appraiser;

(8) TALCB Form 9.0, Addition or Termination of Appraiser Trainee Sponsorship; and

(9) TALCB Form 10.0, Supplement to Application for Appraiser Certification or Licensing by Reciprocity.

(c) An application may be considered void and subject to no further evaluation or processing if an applicant fails to provide information or documentation within 60 days after the board makes written request for the information or documentation.

(d) A certification, license, or appraiser trainee approval is valid for the term for which it is issued by the board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153. 17 of this title (relating to Renewals and Continuing Education).

(e)-(f) (No change.)

(g) An application shall be considered void and subject to no further evaluation or processing if the applicant fails to provide acceptable documentation that all requirements for licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the board, or within one year of the date of the applicant's last examination, whichever occurs later.

§153.11. Examinations.

(a) Examinations [administered by the board to applicants] shall be adminis-

tered in accordance with the provisions of this section and the Act [Texas Appraiser Licensing and Certification Act (the Act)]. Any [If an] examination [is] conducted by a testing service under contract with the board [the examination] shall be conducted in accordance with the procedures specified in the contract.

(b) Each examination shall be consistent with the examination criteria and examination content outline of [concern the subjects endorsed and approved for examinations by] the Appraiser Qualifications Board (AQB) for the category of license or certification sought [and Texas law related to the appraisal of real property]. Each applicant must achieve a passing score acceptable to the AQB [score of at least 75%] on the examination to become licensed or certified. An applicant may file an application to take the examination on the form approved by the board or on a form required by the testing service under contract with the board [or may use the application form for certification or licensing]. In either case, the applicant shall submit the appropriate examination fee as instructed [set by the board]. The board shall require the contracted testing service to notify each person taking an examination whether the person has passed or failed the examination not later than:

(1) the 31st day after the examination date; or

(2) if the examination is graded or reviewed by a national testing service, the 31st day after the date on which the board receives the results from the national testing service. If notification of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 90th day after the examination date. The results of the examination are confidential.

(c) (No change.)

(d) Examinations shall be administered [The board or any testing service under contract with the board shall administer examinations] at locations designated by the board. Applicants [The board] may be assigned [assign] to an examination date and site [to an applicant]. The assigned site must be the nearest examination site available to the applicant. An applicant who is registered for an examination and fails to attend shall forfeit the examination fee [and does not attend an assigned examination shall be deemed to have failed unless the board is notified at least one working day before the exam that the applicant will not appear on the assigned date].

(e) To be authorized for admittance to an examination, the applicant must present to the examination proctor appropriate

documentation required by the testing service under contract with the board [an admission ticket issued by the board]. Admission tickets may [will] specify a date, time, and location for the examination and the admission documents will be valid only for that date. In addition to the admission ticket, examination proctors shall require official photo-bearing personal identification of individuals appearing for an examination and shall deny entrance to anyone who cannot provide adequate identification. Proctors may refuse admittance to an examinee or dismiss an examinee prior to the completion of the examination, if in the proctor's opinion, the individual's conduct or demeanor is such that the proctor feels the individual would be a disruptive influence on the other examinees. Proctors may assign a specific seat or desk to each examinee. Proctors may require that an examinee be reseated during the course of the examination. Proctors may refuse admittance to an examinee who reports to the proctor for admittance to the examination after the time the examination is scheduled to begin.

(f) Examinees are permitted to use slide rules or silent, battery-operated, electronic, pocket sized calculators. If a calculator has printout capability, the use of the calculator must be approved by the examination proctor prior to the examination. [Calculators with alpha-numeric keyboards may not be used.]

(g) Examination schedules shall be published periodically by the board.

(h) Special examinations based on verified physical limitations or other good cause as determined by the board may be arranged for individual applicants. [Special examinations will be administered at the board headquarters in Austin, unless an applicant is physically incapable of traveling to Austin or of being transported to Austin]. Requests for special examinations will be handled individually and may require [requiring] medical verification or confirmation [by the board]. [The method of special examination will be determined by the board based on the particular circumstances of each case].

(i) Examinees shall comply with all instructions from the board, [or] an examination proctor, or the testing service under contract with the board. Proctors may confiscate examination materials of an examinee giving or receiving or attempting to give or receive unauthorized assistance or answers to examination questions and such examinee will be dismissed from the examination session with a failing grade. Dismissal may result in disapproval of an application. The board, or the testing service under contract with the board, may file theft charges against any person who removes or attempts to remove an examina-

tion or any portion thereof or any written material furnished with the examination whether by actual physical removal or by transcription. The board may deny, suspend or revoke a license or certification for disclosing to another person the content of any portion of an examination with the expectation that the disclosed information would be used by or made available to another applicant.

(j) The board shall periodically publish guidelines and preexamination study guides. The periodicals and guidelines shall be updated as necessary and shall be made available to applicants. Except for the examinations and other testing products that require secure and discreet protection, the contents of study guides and other material developed by the board or with the board's authorization is within the public domain and free of copyright restrictions. If the material is reproduced for distribution by an entity other than the board, the material may not be sold at a price above the cost of duplication and distribution. The entity may not profit from the distribution of the material.

§153.13. Educational Requirements.

(a) The board may accept a course of study to satisfy educational requirements for certification or licensing established by the Act [Texas Appraiser Licensing and Certification Act (the Act)] or by this section if the board has approved the course and determined it to be a course related to real estate appraisal.

(b)-(i) (No change.)

§153.15. Experience Required for Certification and Licensing.

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

(d) Experience credit shall be awarded by the board in accordance with current criteria established by the Appraiser Qualifications Board and in accordance with the provisions of the Act [Texas Appraiser Licensing and Certification Act (the Act)] specifically relating to experience requirements. Experience as a real estate lending officer of a financial institution or as a real estate broker is acceptable experience if the experience includes the actual performance or professional review of real estate appraisals. An hour of experience means 60 minutes expended in one or more of the acceptable appraisal experience areas. Calculation of the hours of experience must be based solely on actual hours of experience. Any one or any combination of the following categories may be acceptable for the completion of 1,000 hours of credit each year.

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

(4) Experience credit may be awarded for appraisal analysis. A market analysis typically performed by a real estate broker or salesman may be awarded experience credit when the analysis is prepared in conformity with Standards Rules 1 and 2 of USPAP, and the individual can demonstrate that he or she is [they are] using similar techniques as appraisers to value properties and is effectively utilizing [utilize] the appraisal process.

(5)-(8) (No change.)

(e) Experience claimed by an applicant must be submitted on forms promulgated by the board.

(1) Experience claimed by an applicant shall be submitted upon an Appraisal Experience Affidavit, TALCB Form 2.2 or its successor [If experience claimed by the applicant was gained under direct supervision of an appraiser, certified or licensed under the Act at the time of application, such experience may be submitted by joint affidavit of the applicant and the supervisory appraiser, using TALCB Form 7.0].

(2) If experience claimed by the applicant is submitted upon affidavit of the applicant only, such affidavit must be accompanied by a detailed listing of experience supporting the affidavit using TALCB Forms 2.1 and 3.1.]

(2)[(3)] In exceptional situations, the board, at its discretion, may accept other evidence of experience claimed by the applicant.

(3) If a consumer complaint or peer complaint is brought against the applicant alleging fraud, incompetency, or malpractice and the board finds the complaint is reasonable or if the board determines other just cause exists for requiring further information, the board may obtain the additional information or documentation requested by:

(A) requiring the applicant to complete a form, prescribed by the board, that includes detailed listings of appraisal experience showing, for each appraisal claimed by the applicant, the city or county where the appraisal was performed, the type and description of the building or property appraised, the approaches to value utilized in the appraisal, the actual number of hours expended on the appraisal, and other information determined to be appropriate by the board; or

(B) engaging in other research determined to be appropriate by the board.

[(f) As an alternative to complying with the provisions of subsection (e)(2) of this section, experience claimed by an ap-

plicant for the state licensed real estate appraiser may be submitted on the Appraisal Experience Affidavit, TALCB Form 2.1 or its successor, and the submission of an Appraisal Experience Log, TALCB Form 3.1 or its successor, will not be required.]

§153.17. Renewal of Certification, License or Trainee Approval; Continuing Education.

(a) A license or certification issued by the board is valid for two years after the date of issuance. A certified or licensed appraiser or appraiser trainee may renew the certification, license, or trainee approval by timely filing the prescribed application for renewal, paying the appropriate fee to the board and satisfying continuing education requirements as provided by this section.

(b) The board shall mail the prescribed renewal application form to the appraiser or trainee's last known business address at least 90 days prior to the expiration of the certification, license or approval. [An appraiser trainee's business address is the address of the appraiser trainee's sponsoring appraiser] It is the responsibility of the appraiser or trainee to apply for renewal in accordance with these sections, and failure to receive a renewal application from the board does not relieve the appraiser or trainee of the responsibility of applying for renewal.

(c) The board may not accept a renewal application filed after the expiration of the certification, license, or appraiser trainee approval. An appraiser or trainee who does not timely file a renewal application must reapply for certification, license or approval as an appraiser trainee in accordance with the provisions of §153.9 of this title (relating to Applications). If the application is filed within one year of the expiration of a previous certification or license the applicant shall also provide satisfactory evidence of completion of any continuing education that would have been required for a timely renewal of the previous certification or license. If the application for certification or license is filed more than one year after the expiration of the previous certification or license, the applicant must successfully complete the examination required by §153.11 of this title (relating to Examinations).

(d) (No change.)

(e) As a condition for renewing a certification or license after December 31, 1994, or two years after the federal implementation of Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), whichever is later, an appraiser must successfully complete the equivalent of at least 20 classroom hours of appraiser continuing education (ACE) courses ap-

proved by the board, during the two-year period preceding the expiration of the certificate or license. The board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualification criteria of the Appraiser Qualifications Board (AQB). The board shall accept as continuing education any continuing education a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education.

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings may be accepted for meeting the ACE requirements:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal-related topics of the then-current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education; and

(ii) The course was not repeated within a three-year period;

(B) A course that has been accepted by an appraiser professional trade association as meeting the association's continuing education requirements if the board [Board] has previously approved one or more courses from the association as meeting licensure or certification requirements, provided that the course must have been at least two hours in duration and devoted to one or more of the appraisal-related topics of the then current appraiser qualifications criteria of the AQB for continuing education;

(C) A course specifically approved by the board [Board] for meeting ACE offered by a provider as specified in §153.13(b)(2) of this title (relating to Educational Requirements), provided the course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education and the course is at least two hours in duration;

(D) A course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education;

(E) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.

(3)-(4) (No change.)

(5) Appraiser continuing education credit may also be granted for participation, other than as a student, in a real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board [Board] to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

(f) (No change.)

(g) Renewal of Licenses or Certification for Servicemen on Active Duty Outside the State.

(1) A person previously licensed or certified by the board [Board] under this Act who is on active duty in the united States armed forces and serves in this capacity outside the State of Texas may renew an expired license or certification without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(A) provides a copy of official orders or other documentation acceptable to the board [Board] showing that the person was on active duty outside the state during the person's last renewal period;

(B) applies for the renewal within 90 days after the person's active duty ends; and

(C) pays the renewal application fee in effect when the previous license or certification expired.

(2) Appraiser continuing education requirements that would have been imposed for a timely renewal shall be deferred under this section to the next renewal of a license or certification.

(h) Denial of Licensing and Certification of Persons who are in Default on TGSLC Loans. Renewals of licenses and certifications issued by the board [Board] are subject to the policies established by the Texas Education Code, §57.491. Before the

board [Board] declines to renew a license or certification due to default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC), a default on a repayment agreement with TGSLC, or a failure to enter a repayment agreement with TGSLC, the board [Board] shall give notice and provide an opportunity for a hearing in accordance with the provisions of the Texas Government Code, §2001.034 [Texas Civil Statutes, Article 6252-13a, §18]. The board [Board] shall advise those licensed or certified in renewal notices and shall advise those who apply for licensure or certification in application forms that default on a loan guaranteed by TGSLC may prevent subsequent renewal of a license or certification or prevent the approval of an initial application for license or certification.

§153.19. Licensing and Certification of Persons with Criminal Backgrounds.

(a) No currently incarcerated individual will be eligible to obtain or renew an appraiser license or certification.

(b) As provided in Texas Civil Statutes, Article 6252-13c, the board [Board] may suspend or revoke an existing valid license or certification, disqualify an individual from receiving a license or certification, or deny to a person the opportunity to be examined for a license or certification because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed or certified occupation. The board [Board] shall revoke the license or certification of an individual upon his felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision.

(c) The Texas Appraiser Licensing and Certification Board considers it very important that persons who are licensed or certified, persons who are candidates to be licensed or certified, and persons who are training to be licensed or certified [.] be honest, trustworthy, and reliable. The public necessarily reposes a great deal of trust and reliance upon licensed and certified appraisers because of the complex nature of appraisal valuation, and such relationship should not be undermined. When entering onto another's business or residential property or when representing the interests of another, an appraiser must have the ability to conduct himself or herself with honesty, trustworthiness, reliability, and integrity. Thus, the board [Board] deems the following felonies and misdemeanors directly related to the occupation of licensed or certified appraisers or appraiser trainees:

(1) offenses involving fraud or misrepresentation;

(2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;

(3) offenses against public administration;

(4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(5) offenses involving moral turpitude; and

(6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) In determining whether a criminal offense is directly related to an occupation, the board [Board] shall consider the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or certification to engage in the occupation;

(3) the extent to which a license or certification might offer an opportunity to engage in further criminal activity of the same type as that which the person had previously been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed or certified occupation.

(e) In addition to the factors that may be considered under subsection (b) of this section, the board [Board], in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness including letters of recommendation from [.] prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(f) It shall be the responsibility of the applicant to the extent possible to secure

and provide the board [Board] the recommendations of the prosecution, law enforcement, and correctional authorities; the applicant shall also furnish proof in such form as may be required by the board [Board] that he or she has maintained a record of steady employment and has supported his or her dependents and otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§153.20. Guidelines for Revocation and Suspension; Investigation.

(a) The board [Texas Appraiser Licensing and Certification Board (the Board)] may suspend or revoke a license or certification issued under the provisions of the Act [Texas Appraiser Licensing and Certification Act (the Act)] at any time when it has been determined that the person holding the license or certification:

(1)-(13) (No change.)

(b) The board [Board] has discretion in determining the appropriate penalty for any violation under subsection [Subsection] (a) of this section with the following restrictions:

(1) Penalty for an offense under subsection [Subsection] (a)(1) shall be immediate revocation of a license or certification pursuant to [Vernon's] Texas Civil Statutes, Article 6252-13c(4)(e);

(2) Penalty for an offense under subsection [Subsection] (a)(3) shall be suspension or withholding of license or certification for a period not to exceed two years;

(3) Penalty for a first violation under subsection [Subsection] (a)(4) shall be suspension of license or certification for a period not to exceed 60 days;

(4) Penalty for a second violation under subsection [Subsection] (a)(4) shall be suspension of license or certification for a period not to exceed one year;

(5) Penalty for a third violation under subsection [Subsection] (a)(4) shall be suspension of license or certification for a period not to exceed three years;

(6) Penalty for an offense of either subsection [Subsection] (a)(6) or subsection [Subsection] (a)(7) shall be suspension of license or certification not to exceed a period of three years.

(c) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the Act or under the laws of this State.

(d) To determine if probable cause exists for a hearing on a complaint, the board [the Board] may designate an

investigator [direct the commissioner] on signed complaint in writing or upon the board's [Board's] own motion, to investigate the actions and appropriate records of a state licensed real estate appraiser, a state certified real estate appraiser, or an appraiser trainee. If the board determines that the complaint does not present facts that constitute a basis for disciplinary action, the board may not take further action.

(e) The chair of the board with the advice and consent of the executive committee may appoint a peer investigative committee consisting of three real estate appraisers certified or licensed under the Act. The chair of the investigative committee must be an appraiser member of the board. Each remaining member of the committee shall certify to the board that the member is familiar with the appraisal process in the appraisal to be reviewed. The investigative committee shall review and determine the facts of the complaint and submit a written report to the board in a timely manner. The board [commissioner] may ask for inspection of an appraiser's books and records relative to a specific complaint or investigation. The appraiser must produce the specified documents within 60 days of the request.

(f) The board [Board] may not investigate under this section a complaint submitted more than two years after the date of discovery of the incident involving the state licensed real estate appraiser, state-certified real estate appraiser, or appraiser trainee who [that] is the subject of the complaint.

(g) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigation conducted by the authority of the Act. No investigations of licensees or certificate-holders or any other actions against licensees or certificate holders shall be initiated on the basis of anonymous complaints whether in writing or otherwise, but shall be initiated only upon the board's [Board's] own motion or a signed written complaint. Upon the adoption of such a motion by the board [Board] or upon receipt of such complaint, the licensee or certificate holder shall be notified promptly and in writing unless the board [Board] itself, after due consideration determines otherwise.

(h) All board [Board] members, officers, directors, and employees of this agency shall be held harmless with respect to any disclosures made to the board [Board] in connection with any complaints filed with the board [Board].

(i) On completion of an investigation, a written report containing statements of fact, the recommendations of

the investigator, and the position or defense of the investigated appraiser shall be submitted by the investigator for the board to determine what further action is necessary. Based on the report, the board may:

(1) order that the matter be further investigated;

(2) permit the appraiser who is the subject of the complaint to appear before the board for an informal discussion regarding the alleged violation, pursuant to subsection (j) of this section;

(3) determine that probable cause does not exist to believe that a violation occurred and dismiss the case; or

(4) determine that probable cause that a violation occurred exists and proceed with a contested case hearing as the complainant.

(j) The board may permit an appraiser under investigation an opportunity to appear before the board for a voluntary informal discussion of facts and circumstances of an alleged violation on the board's motion or on request of the appraiser. The informal discussion constitutes part of the board's investigation of the pending disciplinary case and the facts discussed at the informal discussion may be considered by the board if the case proceeds to a contested case hearing. The board may seek a consent order as provided by subsection (k) of this section at the time of the informal discussion.

(k) The board may negotiate a settlement and enter into a consent order with an appraiser who is under investigation. An appraiser member of the board designated by the chair and the attorney general may agree to negotiate a settlement under this subsection. A proposed consent order shall be presented to the board for approval and shall be binding if approved by the board and signed by the board chair and the appraiser. A board member who participates in negotiation of a consent order is not disqualified for participating in adjudication of the contested case that results from the negotiation. Consent to negotiation by the appraiser constitutes waiver of the right to notice and the opportunity to be heard under the Texas Government Code, §2001.001 et seq during the settlement negotiations. A prosecuting attorney may discuss informal settlement with the board chair or a representative of the board. If the parties agree to a consent order, a statement of charges shall be filed with the consent order.

(l) The board, in its discretion and in lieu of prosecuting a first-time

violator of the rules of professional conduct adopted by the board, may enter into a consent agreement as provided by this subsection. An appraiser member of the board, designated by the chair, and the attorney general may agree to negotiate a consent agreement. The proposed consent agreement shall be presented to the board for approval and shall be binding if approved by the board and signed by the board chair and the appraiser. Failure by the appraiser to comply with the terms of the agreement constitutes grounds for prosecution.

(m) A certified or licensed appraiser who files a complaint against another certified or licensed appraiser that the board determines to be frivolous is liable for a civil penalty. At the request of the board, the attorney general or a district or county attorney may institute a civil action in district court to collect a penalty under this subsection. A civil penalty under this subsection may not be less than \$500 or more than \$10,000. A civil penalty recovered in a suit instituted under this subsection shall be deposited in the state treasury to the credit of the general revenue fund.

(n)(i) If the board determines to take further action, notice of a hearing shall be given in accordance with §151.17 of this title (relating to Notice of Hearing) [the Rules of the Texas Appraiser Licensing and Certification Board]; and any further proceedings shall be considered to be a contested case and to be governed by the Texas Government Code, §2001.051-202 [Administrative Procedures and Texas Register Act, Article 6252-13a]. The hearing may be conducted by the State Office of Administrative Hearings pursuant to the Texas Government Code, §2003.001 et seq [Vernon's Texas Civil Statutes, Article 6252-13f], and Chapter 155 of this title (relating to Standards of Practice).

§153.21. Appraiser Trainees.

(a) A person desiring to be an appraiser trainee under the sponsorship of one or more state-certified appraisers [A certified or licensed appraiser] may apply to the board [to sponsor an appraiser trainee] on the application form prescribed by the board. A prospective trainee must be a citizen of the United States or a lawfully admitted alien; be at least 18 years of age; be a legal resident of this state for at least 60 days immediately before the filing of the application; and satisfy the board as to the prospective trainee's honesty, trustworthiness, and integrity. Once a person is approved as an appraiser trainee by the board, the person may perform appraisals only under the direction and direct supervision of a [the] sponsoring certified appraiser unless one of the following events occurs:

(1) the appraiser trainee approval expires due to nonpayment of the annual renewal fee or the educational requirements for renewal have not been met;

(2) the sponsorship is terminated by either the sponsor or the trainee, leaving the appraiser trainee without a sponsoring certified appraiser; or

(3) the trainee's authority to act has been suspended or revoked by the board.

(b) The sponsoring certified appraiser shall immediately notify the board in writing of any termination of sponsorship of an appraiser trainee, on a form prescribed by the board and pay a fee set by the board not later than the 10th day after the date of such termination. The board will notify the trainee that the sponsorship has been terminated.

(c) If an appraiser trainee's approval has expired or been revoked by the board or the trainee is no longer under the sponsorship of a certified appraiser [sponsorship of the appraiser trainee has been terminated], the appraiser trainee may not perform the duties of an appraiser trainee [appraisals] until an application to sponsor the trainee has been filed together with the appropriate fee [by a certified or licensed appraiser] and approved by the board.

(d) Certified [or licensed] appraisers who sponsor appraiser trainees and who sign a report shall be [are] responsible to the public and to the board for the conduct of the appraiser trainee under the Act [Texas Appraiser Licensing and Certification Act (the Act)]. After notice and hearing, the board may reprimand a sponsoring appraiser or may suspend or revoke a sponsoring appraiser's certification [or license] based on conduct by the appraiser trainee constituting a violation of the Act or a rule of the board.

(e) A certified appraiser may be added as a sponsor during the term of an appraiser trainee's authorization, by completing a form prescribed by the board and paying a fee set by the board, and shall assume all the duties, responsibilities, and obligations of an appraiser trainee sponsor as specified in these rules.

(f) An appraiser trainee sponsored by a state licensed appraiser on September 1, 1993, may continue to perform the duties of an appraiser trainee under the sponsorship and supervision of that state licensed appraiser until the first renewal after January 1, 1994, after which time the appraiser trainee must become sponsored by a certified appraiser.

§153.23. Appraisers Meeting Certification Requirements under Prior Law; Transitional Licenses.

(a) The board shall issue a certification as a state-certified general real estate appraiser to a person who has met the requirements for general certification before the effective date of the Act [Texas Appraisal Licensing and Certification Act (the Act)]. The board may not require reapplication or payment of a fee for issuance of certification under this subsection.

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

§153.25. Temporary Certification and Licensure.

(a) A person licensed or certified as an appraiser by another state, commonwealth, or territory may register with the board so as to qualify to appraise real property in this state without holding a license or certification issued under the Act if:

(1) the state, commonwealth, or territory licensing and certification program under which the person holds a license or certification has not been disapproved by the Appraisal Subcommittee;

(2) the real property being appraised is part of a federally-related transaction; and

(3) the appraiser's business in this state is of a temporary nature not to exceed 60 days.

(b) A person registered under this subsection must submit an irrevocable consent to service of process in this state pursuant to §153.29 of this title (relating to Irrevocable Consent to Service of Process).

§153.27. Certification and Licensure by Reciprocity.

(a) A person who is licensed or certified as an appraiser under the laws of a state having substantially equivalent licensure or certification requirements as those of this state may apply for a license or certification under the Act by completing and submitting to the board the application for licensure or certification and paying to the board the fee, both of which are required by the state of the person's present certification.

(b) A person applying for a license or certification under this subsection must submit an irrevocable consent to service of process in this state pursuant to §153.29 of these rules.

(c) An application may not be accepted for a person from a state that refuses to offer reciprocal treatment to residents of this state who are certified or licensed real estate appraisers.

(d) The board shall seek verification from an applicant's home state that the applicant's license or certification is valid and in good standing. A reciprocal license or certificate may not be issued without the verification required by this subsection.

(e) A person holding a license or certification by reciprocity must pay the federal registry fee and other fees imposed by the board.

(f) A reciprocal license or certification expires on the same date that the license or certification held by the applicant in the applicant's home state expires or on the first anniversary of the date the reciprocal license or certification was issued, whichever comes first.

(g) Terms and conditions of renewal will be determined by the board.

§153.29. Irrevocable Consent to Service of Process. A person who applies for licensure or certification under the Act who is not a resident of this state shall submit with the application an irrevocable consent that service of process in an action against the person arising out of the person's activities as a state certified real estate appraiser or state licensed real estate appraiser in this state may be made by delivery of the process to the commissioner of the board if the plaintiff in the action cannot, in the exercise of due diligence, effect personal service on the applicant. If process is served as provided by this section, the commissioner

shall immediately mail a copy of the materials served on the commissioner by ordinary mail to the person at both the person's principal place of business address and the person's residence address.

§153.31. Office Location. An appraiser licensed or certified under the Act who is a resident of this state shall maintain a fixed office in this state. If the appraiser moves from a previously designated address, the appraiser shall notify the board of the new office location on a form approved by the board and pay a fee set by the board, not later than the 10th day after the date of the move.

§153.33. Signature or Endorsement of Appraisal.

(a) A person licensed or certified under the Act may not sign or endorse an appraisal that was not substantially produced by the person. For purposes of this section, an appraisal is substantially produced by a person who contributes materially and in a verifiable manner to the research or analysis that led to the final opinion of value expressed in the appraisal.

(b) For purposes of this section, an appraisal is deemed to have been substantially produced by a person who is certified or licensed under the Act by the appearance of his or her signature on the appraisal report and thus is fully and completely responsible for the contents of the appraisal report.

§153.35. Record Keeping. A person licensed or certified under the Act shall retain all business records relating to an appraisal performed by the applicant or person for at least five years after the date of the appraisal.

§153.37. Offenses.

(a) A person not licensed or certified under the Act commits a Class B misdemeanor if the person knowingly or intentionally uses any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, competency, or ability to perform certified or licensed appraisal services.

(b) A person commits a Class B misdemeanor if the person knowingly or intentionally furnishes false information in connection with an affidavit filed pursuant to §153.15(e) of this title (relating to Experience Required for Certification or Licensing).

Issued in Austin, Texas, on September 3, 1993.

TRD-9328430

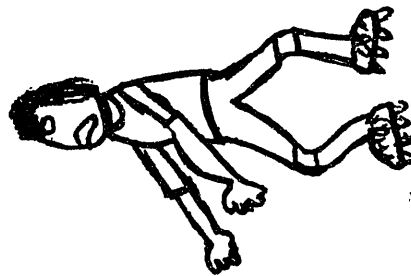
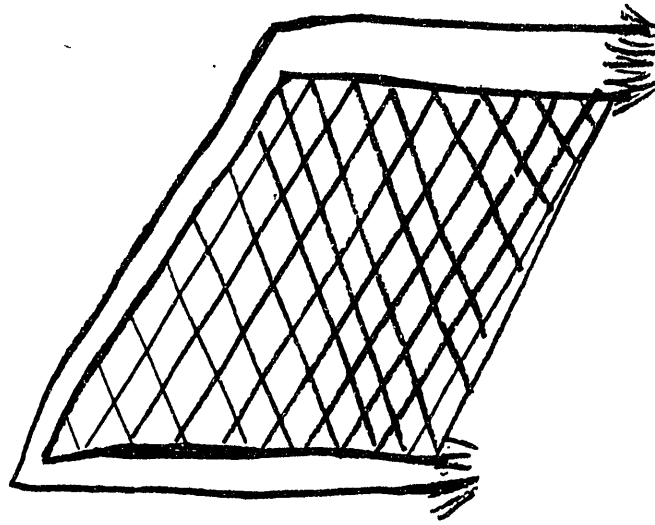
Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: September 7, 1993

Expiration date: January 6, 1994

For further information, please call: (512) 465-3950





KAILA WYATT
5th GRADE
EHRHARDT ELEM.
KLEIN I. S. D.
HOUSTON

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 IV. Office of the Secretary of State

Chapter 105. Solicitations

Subchapter A. Public Safety Solicitations

Public Safety Organizations, Public Safety Publications, and Certain Independent Promoters

The Office of the Secretary of State proposes new §§105.1, 105.4, 105.7, 105.31, 105.34, 105.37, 105.101, 105.104, 105.106, 105.109, 105.131, 105.133, 105.135, 105.140, 105.201, 105.204, and 105.209, concerning public safety solicitations, veterans solicitations, and telephone solicitations. Section 105.1 clarifies the procedure for filing registration statements for public safety organizations, public safety publications, and certain independent promoters soliciting in the name of public safety. Section 105.4 describes updated statements that must be filed by the above-described entities. Section 105.7 sets the fees for registration and updated statements. Section 105.31 clarifies the procedure for the filing of registration statements by solicitors for public safety organizations, public safety publications, and certain independent promoters soliciting in the name of public safety. Section 105.34 delineates updated statements that must be filed by such solicitors. Section 105.37 sets the filing fees for registration and updated statements. Section 105.101 clarifies the procedure for the filing of registration statements by veterans organizations which make solicitations through a solicitor. Section 105.104 delineates when a veterans organization must file an updated registration statement. Section 105.106 clarifies the procedure for a veterans organization to use in filing annual reports with the secretary of state. Section 105.109 sets the filing fees for a veterans organization's registration statement, annual updated registration statements, and annual reports. Section 105.131 clarifies the procedure for the filing of registration statements by a solicitor for a veterans organization. Section 105.133 states when a solicitor for a veterans organization must file an annual updated registration statement. Section 105.135 clarifies the procedure the solicitor for a veterans organization must use in filing quarterly reports when required. Section 105.140 sets the filing fee for a veterans organization solicitor's registration state-

ment, annual updated registration statements, and quarterly reports. Section 105.201 clarifies the procedure for the filing of registration statements and renewal statements by a telephone solicitor. Section 105.204 describes the update addendum that a telephone solicitor must file with the secretary of state. Section 105.209 sets the filing fees for a registration statement, renewal statement, and an update addendum.

Guy Joyner, staff attorney, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of administering them. It is estimated that \$80,784 will be required in Fiscal Year 1994 and \$65,400 will be necessary in years 1995-1998. The source of revenue to offset this cost will be the filing fees paid by registrants. It is unknown how many entities will register; therefore, the revenue cannot be computed at this time. There will be no fiscal implications for local government as a result of administering these sections.

Mr. Joyner also has determined that for each year of the first five years the sections are in effect the public benefit anticipated will be to provide individuals and companies with a clarification of the procedure necessary to comply with registration and update requirements for the described entities that are involved in solicitations. The economic cost to businesses and persons who are required to comply with the sections as proposed is the filing fees associated with registration, updates, and required reports.

Comments on the proposal may be submitted to Guy Joyner, Staff Attorney, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

• 1 TAC §§105.1, 105.4, 105.7

The new sections are proposed under Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon Supplement 1993), Acts 1993, 73rd Legislature, Chapter 920, effective September 1, 1993, (Public Safety Solicitations), Acts 1993, 73rd Legislature, Chapter 483, effective September 1, 1993, (Veterans Solicitations), and Acts 1993, 73rd Legislature, Chapter 569, effective September 1, 1993, (Telephone solicitors) which provide the Office of the Secretary of State with the authority to prescribe and adopt rules.

§105.1. Registration.

(a) A registration statement will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The registration statement shall be on a form promulgated by the secretary of state entitled public safety organization, independent promoter, or public safety publication registration statement. The form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

§105.4. Updates.

(a) A registered public safety organization, independent promoter, or public safety publication that continues to solicit must file an annual updated registration statement and pay the applicable fee on or before January 15 of each year during which a solicitation will occur.

(b) A registered public safety organization, independent promoter, or public safety publication shall file an updated statement and pay the applicable fee within 30 days after the date of a change of street address, phone number, or name.

§105.7. Filing Fees.

(a) The filing fee for a registration statement is \$250.

(b) The filing fee for an annual updated registration statement is \$250.

(c) The filing fee for an updated statement pursuant to §105.4(b) of this title (relating to Updates) is \$50.

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 September 3, 1993.

TRD-9328373

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: October 15, 1993

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



Solicitors for Public Safety Organizations, Public Safety Publications, and Certain Independent Promoters

• 1 TAC §§105.31, 105.34, 105.37

The new sections are proposed under Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon Supplement 1993) and Acts 1993, 73rd Legislature, Chapter 920, effective September 1, 1993, which provide the Office of the Secretary of State with the authority to prescribe and adopt rules.

§105.31. Registration.

(a) A registration statement will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The registration statement shall be on a form promulgated by the secretary of state entitled public safety organization, independent promoter, or public safety publication solicitor's registration statement. The form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

§105.34. Updates.

(a) A registered solicitor shall file an annual updated registration statement and pay the applicable fee on or before January 15 of each year during which the solicitor will solicit on behalf of a public safety organization, independent promoter, or public safety publication.

(b) A registered solicitor for a public safety organization, independent promoter, or public safety publication shall file an updated statement and pay the applicable fee within 30 days after the date of a change of street address, mailing address, phone number, or name.

§105.37. Filing Fees.

(a) The filing fee for a solicitor's registration statement is \$500.

(b) The filing fee for an annual updated solicitor's registration statement is \$500.

(c) The filing fee for an updated statement pursuant to §105.4(b) of this title (relating to Updates) is \$50.

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 September 3, 1993.

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Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
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Earliest possible date of adoption: October 15, 1993

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

◆ ◆ ◆
Subchapter B. Veterans Solicitations

Veterans Organizations

• 1 TAC §§105.101, 105.104, 105.106, 105.109

The new sections are proposed under Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon Supplement 1993) and Acts 1993, 73rd Legislature, Chapter 483, effective September 1, 1993, which provide the Office of the Secretary of State with the authority to prescribe and adopt rules.

§105.101. Registration.

(a) A registration statement will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The registration statement shall be on a form promulgated by the secretary of state entitled veterans organization solicitation registration statement. The form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

§105.104. Registration Statement Updates. A registered veterans organization that continues to make solicitations through a solicitor shall file an updated registration statement and pay the applicable fee on or before January 15 of each year during which solicitations will occur.

§105.106. Reports.

(a) Before January 15 of each year, a registered veterans organization that received more than \$500 in solicited funds during the preceding calendar year shall file a report with the secretary of state.

(b) The report shall be on a form promulgated by the secretary of state entitled veterans organization annual report. The form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

§105.109. Filing Fees.

(a) The filing fee for a registration statement is \$150.

(b) The filing fee for an annual updated registration statement is \$150.

(c) The filing fee for an annual report pursuant to §105.106(a) of this title (relating to Reports) is \$50.

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 September 3, 1993.

TRD-9328375

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: October 15, 1993

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

◆ ◆ ◆
Solicitors for Veterans Organizations

• 1 TAC §§105.131, 105.133, 105.135, 105.140

The new sections are proposed under Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon Supplement 1993) and Acts 1993, 73rd Legislature, Chapter 483, effective September 1, 1993, which provide the Office of the Secretary of State with the authority to prescribe and adopt rules.

§105.131. Registration.

(a) A registration statement will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The registration statement shall be on a form promulgated by the secretary of state entitled veterans organization solicitor's registration statement. The form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

§105.133. Registration Statement Updates. A registered solicitor shall file an annual updated registration statement and pay the applicable fee on or before January 15 of each year during which the solicitor will solicit on behalf of a veterans organization.

§105.135. Reports.

(a) At the end of each calendar quarter, a solicitor who raises more than \$5,000 for a veterans organization during that calendar quarter shall file a report with the secretary of state.

(b) The report shall be on a form promulgated by the secretary of state entitled veterans organization solicitor's quar-

terly report. The form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

§105.140. Filing Fees.

(a) The filing fee for a solicitor's registration statement is \$500.

(b) The filing fee for an annual updated solicitor's registration statement is \$500.

(c) The filing fee for an updated statement pursuant to §105.135(a) of this title (relating to Reports) is \$50.

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 September 3, 1993.

TRD-9328371 Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: October 15, 1993

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

◆ ◆ ◆ **Subchapter C. Telephone Solicitations**

• 1 TAC §§105.201, 105.204, 105.209

The new sections are proposed under Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(a) (Vernon Supplement 1993) and Acts 1993, 73rd Legislature, Chapter 569, effective September 1, 1993, which provide the Office of the Secretary of State with the authority to prescribe and adopt rules.

§105.201. Registration.

(a) A registration statement will be accepted for filing only upon submission of a completed registration form and payment of the applicable fee.

(b) The registration statement shall be on a form promulgated by the secretary of state entitled telephone solicitation registration statement. The form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711-2887.

(c) A telephone solicitation seller shall file an irrevocable consent appointing the secretary of state to act as the seller's agent to receive service of any lawful process in any noncriminal suit, action or proceeding against the seller that may arise

under Acts 1993, 73rd Legislature, Chapter 569, effective September 1, 1993. The consent shall be on a form promulgated by the secretary of state entitled appointment of the secretary of state as agent for service. The form may be obtained by writing the Statutory Documents Section at the address provided in subsection (b) of this section.

(d) The effective date of a registration statement is the date on which the secretary of state issues the certificate of registration. A registration statement is effective for one year after its effective date and may be renewed.

(e) A registration statement is renewed by filing a renewal registration statement and paying the applicable fee.

§105.204. Updates.

(a) A registered telephone solicitation seller shall file an update addendum at quarterly intervals, computed from the effective date of registration. The addendum must provide all required registration information for all salespersons who are currently soliciting or have solicited on behalf of the seller at any time during the period between the filing of the registration statement or the last addendum and the current addendum.

(b) The update described in subsection (a) of this section may be filed on a form promulgated by the secretary of state entitled telephone solicitor's quarterly update. An alternative method for filing the update is for the seller to provide a copy of the "Employer's Quarterly Report" for employee wages it files with the Texas Employment Commission.

(c) In addition to the quarterly updates, if a material change in a registration statement, other than the information delineated in subsection (a) of this section, occurs before the date for renewal, a seller shall submit that information by filing an update addendum.

§105.209. Filing Fees.

(a) The filing fee for a registration statement is \$200. This fee includes one certificate of registration for one location. If the telephone solicitation seller uses one registration statement to register more than one business location, there is a fee of \$10 for each additional certificate of registration.

(b) The filing fee for a renewal registration statement is \$200. The fee for additional certificates of renewal is as delineated in subsection (a) of this section.

(c) The filing fee for an update addendum is \$50.

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 September 3, 1993.

TRD-9328372 Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: October 15, 1993

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

◆ ◆ ◆ **Part V. General Services Commission**

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.7

The General Services Commission proposes an amendment to §113.7, concerning competitive sealed proposals. The amendment is to conform with House Bill 2626, §12, Acts, 73rd Legislature, which amends Texas Civil Statutes, Article 601b, by adding §3.0221, pertaining to competitive sealed proposals.

Pat Martin, director, Purchasing Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Martin also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater use of the competitive sealed proposals process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Judith M. Porras, General Counsel, 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, Article 3, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purposes of Article 3.

§113.7. Competitive Sealed Proposals.

(a) The commission may use competitive sealed proposals to acquire the following items or services:

(1) telecommunications devices, systems or services;

(2) automated information systems, or the computers on which they are automated; [or]

(3) services related to the automation of information systems or the computers on which they are automated, including computer software;

(4) supplies, materials, or equipment if the cost of acquisition is \$1 million or more; or

(5) routine services if the cost of acquisition is \$100,000 or more.

(b) For the acquisition of goods or services described in paragraphs (1)-(3) of subsection (a) of this section, the [A] competitive sealed proposal procedure shall be used only after the director has made a written determination that its use will be in the best interest of the state. The determination must show that competitive bidding is not practical or is disadvantageous to the state. If the purchase has been properly delegated to an institution of higher education, the written determination to use the competitive sealed proposal procedure must be signed by the person designated by the president or governing body as purchasing officer for the institution of higher education, and otherwise comply with this section. The written determination by the purchasing officer will be made part of the purchase order file and shall be subject to payment review by the commission. For the acquisition of goods or services described in subsection (a)(4) and (5) of this section, the competitive sealed proposal procedure shall be used only after the commission has made a determination in an open meeting that competitive bidding is not practical or is disadvantageous to the state. Only the commission may acquire these items using the competitive sealed proposal procedure; this authority may not be delegated to an agency.

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

(e) Proposals shall be solicited by issuing a request for proposals (RFP). The commission shall consult with appropriate personnel of a requisitioning agency to develop specifications for an RFP. Public notice of the RFP shall be given by mail to prospective vendors on the appropriate commodity or service bidders list, and to any other sources suggested by the agency or commission staff. The RFP shall state the time and place at which the proposals will be received and opened. Proposals received after the time and date specified shall be returned and shall not be considered.

(f)-(h) (No change.)

(i) Proposals shall be evaluated on the basis of objective norms whenever possible, rather than comparing one proposal against another. Only the price, the evaluation criteria stated in the RFP, and, if applicable, the factors listed in subsection (j) of this section may be considered in the evaluation of proposals.

An evaluation team may be formed to evaluate and discuss proposals; if so, the commission will invite the agency to participate.

(j) For the acquisition of goods or services described in subsection (a)(1)-(3) of this section, the following factors shall be considered when evaluating proposals:

(1)-(8) (No change.)

(k)-(o) (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 September 3, 1993.

TRD-9328320

Judith M. Porras
General Counsel
General Services
Commission

Earliest possible date of adoption: October 15, 1993

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

Part X. Department of Information Resources

Chapter 201. Planning and Management of Information Resources Technologies

• 1 TAC §§201.5, 201.9, 201.13

(Editor's Note: The Department of Information Resources proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections is in the Emergency Rules section of this issue.)

The Department of Information Resources proposes amendments to §§201.5, 201.9, and 201.13, concerning the planning and management of information resources technologies. The amendments are necessary to ensure the procedures for review of analyses of project acquisition alternatives, review of acquisition specifications, and information resources standards and policies comply with the provisions of legislation enacted by the 73rd Legislature, Regular Session.

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

Mr. Serna also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification and simplification of the administrative requirements of the Information Resources Management Act to conform with legislative changes made during the 73rd Legislature, Regular Session. There will be no effect on small businesses. There is no anticipated

economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John Hawkins, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, no later than 5 p. m., October 15, 1993. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The amendments to the sections are proposed under Texas Revised Civil Statutes, Article 4413(32) §9(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management 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 September 2, 1993.

TRD-9328264

Ann S. Fueberg
Executive Director
Department of Information
Resources

Earliest possible date of adoption: October 11, 1993

For further information, please call: (512) 475-4700

• 1 TAC §201.7

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

The Department of Information Resources proposes the repeal of §201.7, concerning agency annual performance reports for information resources technologies. The repeal is necessary to ensure compliance with the provisions of Senate Bill 381, enacted by the 73rd Legislature, Regular Session, effective June 19, 1993.

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

Mr. Serna also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification and simplification of the administrative requirements of the Information Resources Management Act to conform with legislative changes made during the 73rd Legislature, Regular Session. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to John Hawkins, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711, no later than 5:00 p. m., October 15, 1993. Envelopes must be clearly marked

"Formal Comment to Proposed Action Enclosed."

The repeal is proposed under Texas Civil Statutes, Article 4413(32j) §9(a), which authorize the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management 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 September 2, 1993.

TRD-9328263

Ann S. Fuelberg
Executive Director
Department of Information
Resources

Earliest possible date of adoption. October 11, 1993

For further information, please call: (512) 475-4700

Part XVI. State Council on Competitive Government

Chapter 401.

ADMINISTRATION

Subchapter A. General Rules

(Editor's note: Due to an error by the Texas Register the following rules submitted by State Council on Competitive Government were inadvertently omitted in the September 10, 1993 issue of the Texas Register.

We apologize for any inconvenience this may cause.)

The Council on Competitive Government proposes new §§401.1-401.4, 401. 21-401.28; 401.41-401.49; 401.61, 401.62, 401.81, 401.82, 401.101-401.104, concerning administration and implementation of the competitive government process. The new rules apply the statutory requirements of Texas Civil Statutes, Article 601b, Article 15, by defining standard terms, establishing the guidelines for meetings, providing for identification and review of state services, establishing requirements for the evaluation of proposals, identifying duties of state agencies, and providing for monitoring of services.

The council proposes these rules to establish general guidelines and procedures to insure an orderly process to encourage competition and accomplish the responsibilities provided by law. The council is comprised of the governor, the lieutenant governor, the comptroller, the speaker of the house of representatives, the presiding officer of the General Services Commission, and the commissioner of the Texas Employment Commission representing labor. The council has no staff of its own and will utilize staff from the council members' respective agencies to assist in the council's responsibilities.

Mike Reissig, chief revenue estimator of the Comptroller's Office, has determined that for

the first five-year period the rules 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 rules are in effect the public benefit anticipated as a result of enforcing the new sections will be in providing them with new information regarding the State Council on Competitive Government's program to improve the quality of state services. There will be no impact on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the new sections may be submitted to John Poulard, Executive Director, General Services Commission, P.O. Box 13047, 1711 San Jacinto, Austin, Texas 78711.

• 1 TAC §§401.1-401.4

The new sections are proposed under Texas Civil Statutes, Article 601b, Article 15, which provide the council with the authority to promulgate rules to carry out the purposes of that article.

§401.1. General Statement of Purpose. Pursuant to Texas Civil Statutes, Article 601b, Article 15, the State Council on Competitive Government is responsible for developing a program to encourage competition, innovation, and creativity in providing state services in order to improve the quality of those services. These rules are promulgated to inform the public and provide an orderly procedure to accomplish the responsibilities provided by law.

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

Agency in-house cost estimate—A state agency report that contains the agency's computation of the estimated cost to the agency to produce or deliver a desired quality and quantity of an identified state service using agency personnel and facilities, which computation must be made using the council-approved cost methodology.

Clerk—The executive director of the commission, who shall serve as the clerk of the council pursuant to §401.21(b) of this title (relating to Council Officers) as follows.

Commission—The General Services Commission.

Commercially available service—A service performed or provided by at least two private service providers within the state.

Competitive process—Any procedure approved by the council that is designed to provide identified state services in competition with private service providers or other state agency providers.

Comptroller—The Comptroller of Public Accounts.

Council—The State Council on Competitive Government.

Council-approved cost methodology—A methodology developed or approved by the council, designed to accurately identify all direct and indirect costs incurred by a state agency in providing a particular service, for use by state agencies in preparing agency in-house cost estimates or similar reports to the council, and for other purposes specified in this chapter.

Designees—Individuals designated by council members to act on their behalf pursuant to §401.22 of this title (relating to Designees) as follows.

Historically underutilized business:

(A) a corporation formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more persons who:

(i) have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control, including African Americans, Hispanic Americans, women, Asian Americans, and Native Americans; and

(ii) have a proportionate interest and demonstrate active participation in the control, operation, and management of the corporation's affairs;

(B) a sole proprietorship created for the purpose of making a profit that is 100% owned, operated, and controlled by a person described by subparagraph (A)(i) of this section;

(C) a partnership formed for the purpose of making a profit in which at least 51% of the assets and interest in the partnership is owned by one or more persons who:

(i) are described by subparagraph (A)(i) of this section; and

(ii) have a proportionate interest and demonstrate active participation in the control, operation, and management of the partnership affairs;

(D) a joint venture in which each entity in the joint venture is a historically underutilized business under this section; or

(E) a supplier contract between a historically underutilized business under this section and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

Identified state service—A service provided by the state that the council has identified as a commercially available service and is brought under study by the council to determine whether the service may better be provided through competition with private service providers.

Management study—A state agency analysis of an activity conducted by that agency that is made to determine the essential elements of an activity, the quality and quantity of the services delivered, and the method used by the agency to provide those services.

Person—Any individual, corporation, partnership, joint venture, or other legal entity, including an agency or office of state or local government.

Proposal—An offer to perform an identified state service, made within guidelines prescribed by the council.

Proposer—Any person who submits a proposal to the council.

Salvage property—Any personal property which through use, time or accident is so depleted, worn out, damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

Service provider—A public or private entity performing an identified state service.

State agency—

(A) any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state, except the Texas High-Speed Rail Authority;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) a university system or an institution of higher education as defined in the Education Code, §61.003, as amended, other than a public junior college.

Suggestion—A letter, memorandum, or other document submitted to the council or a state agency pursuant to §401.42 of this title (relating to Submission and Receipt of Suggestions), recommending that the council consider designating a particular state service as an identified state service.

Surplus property—Any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs. Surplus property may be used or new but possesses some usefulness for the purpose of which it was intended or for some other purpose.

§401.3. Exemption from State Purchasing Laws. Contracts made by the council, decisions regarding whether a state agency

must engage in a competitive process, the designation of services as identified state services, and all other actions taken by the council in connection therewith are exempt from all state laws regulating or limiting state purchasing and purchasing decisions. This exemption applies to all decisions and actions of the council directly or indirectly relating to the competitive process.

§401.4. Reporting Cost Savings. The council periodically may develop or collect information regarding cost savings and enhanced revenue realized by the state and resulting from identified state services that have been subjected to competition by the council. In connection therewith, the council periodically may require state agencies to identify and report to the council cost savings and enhanced revenue realized by such agencies and resulting from services provided by such agencies which have been subjected to competition by the council. The council may take appropriate steps to verify the information received from state agencies. The council may report its findings to the governor or the Legislative Budget Board for consideration under the provisions of the Government Code, Chapter 317.

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 September 3, 1993.

TRD-9328280

John Pouland
Executive Director, General
Services Commission
State Council on
Competitive
Government

Earliest possible date of adoption: October 15, 1993

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

◆ ◆ ◆
**Subchapter B. Council Meeting
Guidelines and Requirements**

• **1 TAC §§401.21-401.28**

The new sections are proposed under Texas Civil Statutes, §111.002, Article 601b, Article 15, which provide the council with the authority to promulgate rules to carry out the purposes of that article.

§401.21. Council Officers.

(a) The governor is the presiding officer of the council. The lieutenant governor shall serve as presiding officer in the governor's absence. The comptroller shall serve as the presiding officer in the absence of both the governor and lieutenant governor.

(b) The executive director of the commission is designated as the clerk of the council and shall perform the duties prescribed herein and such other duties as may be prescribed by the council.

(c) Notices, suggestions, correspondence, or other documents to be delivered to the council shall be delivered to the clerk for distribution to the members of the council. Such information shall be delivered to the clerk at Council on Competitive Government, General Services Commission, 1711 San Jacinto, P.O. Box 13047, Austin, Texas 78711-3047, (512) 463-3446.

§401.22. Designees.

(a) Council members may designate staff from their respective agencies or offices to act on their behalf. Council members shall notify the clerk in writing of designated staff authorized to act and vote on the member's behalf in connection with council business and deliberations.

(b) Designees have full power and authority to act on behalf of the members of the council whom they represent, including all power and authority vested under Texas Civil Statutes, Article 601b, Article 15, and under this chapter.

(c) The council may assign staff to review, evaluate, consider, or analyze any suggestions, proposals, or other information on the council's behalf. The assigned staff may perform any function deemed necessary by the council. The results of any reviews or evaluations may be made in writing and submitted to the clerk for distribution to council members. The council may consider the written recommendations, but shall not be bound by such recommendations.

§401.23. Meetings.

(a) The council shall meet at least once quarterly and at other times at the call of the presiding officer or upon the written request of three or more members of the council. Any written requests must be filed with the clerk. All meetings shall comply with the open meetings provisions in the Government Code, Chapter 551; Texas Civil Statutes, Article 601b, Article 15; and this chapter.

(b) The council shall maintain a written plan that describes how a person who does not speak English, or who has a physical, mental or developmental handicap may be provided with reasonable access to council meetings.

(c) The clerk shall be responsible for filing notice of meetings as required by law. The clerk shall also give notice of the meetings to council members.

(d) Council meetings shall be conducted in accordance with standard parliamentary rules of procedure.

§401.24. Agenda for Council Meetings.

(a) The clerk, at the direction of the presiding officer, shall prepare the agenda prior to council meetings. Notice of all items to be considered shall be filed with the secretary of state as required by law.

(b) Items shall be included on the agenda upon the written request of three or more council members. The written request shall be forwarded to the presiding officer and the clerk.

(c) Items also shall be included on the agenda upon the written request of one council member and approval of the presiding officer. The written request shall be forwarded to the presiding officer and the clerk.

(d) If the presiding officer finds that an emergency exists requiring immediate council action, additional items may be added to the agenda in accordance with the provisions of the Texas Open Meetings Act.

§401.25. Record of Meetings. The clerk shall keep a complete record of the meetings of the council and shall prepare written summaries or minutes reflecting actions taken by the council members present as required by the Government Code, Chapter 551.

§401.26. Voting Procedures. The council may take action upon a majority vote of those members present and voting.

§401.27. Public Comment.

(a) The council shall develop and implement reasonable policies that provide the public with an opportunity to appear before the council and speak on issues within the scope of the council's jurisdiction.

(b) Public comments shall be heard subject to limitations imposed at the discretion of the presiding officer, including time limits and other constraints as necessary for efficient and fair consideration of agenda items.

(c) An opportunity for public comments shall be provided at each council meeting.

§401.28. Public Hearings. The council may periodically hold public hearings to obtain input regarding the policies and operations of the council, issues before the council, and to solicit suggestions and ideas from interested members of the public.

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 September 3, 1993.

TRD-9328283

John Poulard
Executive Director, General
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State Council on
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For further information, please call: (512) 463-4028

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**Subchapter C. Identification
and Review of State Ser-
vices**

• **1 TAC §§401.41-401.49**

The new sections are proposed under Texas Civil Statutes, §111.002, Article 601b, Article 15, which provide the council with the authority to promulgate rules to carry out the purposes of that article.

§401.41. Requirements for Suggestions.

(a) A suggestion must:

- (1) be in writing;
- (2) describe a service currently provided by the state that is reasonably susceptible to a competitive process; and
- (3) provide sufficient information to allow the council to review the suggestion.

§401.42. Submission and Receipt of Suggestions.

(a) Any person may submit written suggestions to the council. Such suggestions should be submitted to the council through the clerk, by means of facsimile transmission, hand delivery, or private or public mail. The clerk will promptly distribute copies of all suggestions to council members.

(b) The council may request and receive suggestions from any source, public or private.

(c) A state agency that receives a suggestion or proposal shall forward a copy to the clerk within 10 days of the receipt of the same by the state agency.

§401.43. Council Mandated Information.

(a) The council may require a state agency to provide information regarding any service it provides, to assist the council in identifying state services that are commercially available and could be provided

through competition with commercial sources and/or other service providers. A state agency that has been required by the council to provide information regarding a service must provide a written analysis of the service.

(b) The written analysis must include the following:

(1) a brief overview and a description of the service, including the technical requirements or specifications of the service;

(2) an analysis of the quality and quantity of work performed by the agency in relation to the service;

(3) a description of an efficiency initiatives the agency has designed or implemented in relation to that service;

(4) a detailed statement and itemization of all direct and indirect costs incurred in providing the service (including costs incurred by other agencies, such as the comptroller, treasurer, and attorney general), based upon the council-approved cost methodology and conforming to all applicable council guidelines and instructions that will enable the council to make meaningful and accurate cost comparisons with other potential service providers;

(5) a detailed statement of the number of full time employees (or full time employee equivalents), and their salary levels, used to provide the service ;

(6) a detailed description of the service that conforms to all applicable council guidelines and instructions, containing sufficient information, as determined by the council, to allow the council to obtain adequate price information from other qualified service providers; and

(7) any other information requested by the council.

§401.44. Designation of Identified State Services.

(a) After it has reviewed a state service pursuant to §401.43 of this title (relating to Council Mandated Information), the council may designate the service as an identified state service. The designation shall be in writing, and copies shall be provided to the clerk and all affected state agencies.

(b) Alternatively, after it has reviewed a state service pursuant to §401.43 of this title, the council may defer a decision regarding designation of that service as an identified state service pending further study of the service. Upon completion of such further study, the council may then designate the service as an identified state service, which designation shall be in writing, with copies provided to the clerk and all affected state agencies.

(c) For purposes of this section and §401.46 of this title (relating to Determination to Subject an Identified State Service to Competition), an "affected state agency" is an agency that provides all or a portion of the state service designated by the council as an identified state service.

§401.45. Information Required for Council's Study.

(a) The council may require a state agency to prepare a written analysis of one or more identified state services. The council may require that any such written analysis include the information set forth in §401.43(b) of this title (relating to Council Mandated Information), and any other information deemed pertinent by the council.

(b) The council may request information from any source, public or private, in connection with its review of an identified state service. The council may consider:

- (1) other expedient and efficient methods of acquisition;
- (2) the availability of potential service providers;
- (3) similar suggestions under review; and
- (4) other relevant information.

§401.46. Determination to Subject an Identified State Service to Competition. The council may determine that an identified state service may better be provided through competition with private commercial sources, other state agency service providers, or both. The council's determination shall be in writing and shall contain a brief statement of the reasons for the determination. A copy of the council's written determination shall be provided to all affected state agencies.

§401.47. Requirement that State Agencies Engage in a Competitive Process.

(a) The council may at any time require a state agency to engage in any competitive process developed or described by the council to subject an identified state service to competition with private commercial sources, with other state agency service providers, or both. A state agency that is required to engage in such a process shall comply fully with all requirements and instructions of the council.

(b) The council may require the commission or any other state agency to prepare specifications, bid invitations, requests for proposal, or any other documents necessary for submitting an identified state service to competition, and may require the commission to provide any other assistance

deemed necessary by the council. The commission shall comply fully with all requirements and instructions of the council.

§401.48. Development of Competitive Process.

(a) The council may establish procedures, issue guidelines or instructions, and take any other steps to describe and identify the competitive process to be followed by a state agency in submitting an identified state service to competition. The written description of the competitive process may incorporate by reference any process or portion of a process described in another commonly available source. Such sources may include but shall not be limited to federal, state and local statutes, rules, regulations, ordinances, procedures and guidelines, as well as private commercial publications.

(b) The council may require an agency to engage in any competitive process reasonably calculated to ensure competition among service providers, including, but not limited to:

- (1) competitive bidding;
- (2) competitive sealed proposals;
- (3) a two-step selection process such as that described in the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4; and
- (4) any other acquisition process identified by the council.

§401.49. Conflict of Interest.

(a) No person may participate in the preparation of specifications, evaluation of proposals, or any significant administrative function related to the competitive process, if the person has or may have a conflict of interest in the proposed or resulting contract.

(b) Without limiting the foregoing, a conflict of interest may be determined by the council to exist if a person participates directly or indirectly in the preparation of specifications, evaluation of proposals, or any significant administrative function related to the competitive process knowing that:

- (1) the person, or any member of the person's immediate family has a significant financial interest in the proposed or resulting contract;
- (2) the person, or any member of the person's immediate family, has a significant financial interest in a business or organization directly involved in the proposed or resulting contract; or

(3) any other person, business, or organization with whom the person or any of the person's immediate family is negotiating or has an arrangement concerning prospective employment is directly involved in the proposed or resulting contract.

(d) In this section:

(1) "immediate family" means a person related in the first degree of consanguinity or affinity to a person that has a significant financial interest in the proposed contract;

(2) "significant financial interest" refers to either:

(A) a personal receipt, or right to receive, money or other valuable property or benefits under the actual or proposed contract;

(B) the holding of a position in a business such as a principal, officer, director, trustee, partner, employee, or the like, or holding any position of management;

(C) the ownership of substantial stock, or other interest in a business. Substantial in this context shall not include token ownership or ownership which would not normally be able to influence the decisions of the business; or

(D) holding more than 10% of the outstanding debt of a person directly involved in the proposed or resulting contract.

(e) This section does not preclude a state agency or employees of a state agency from competing to provide an identified state service already being provided by that agency, if the agency or employees do not participate directly in the evaluation of proposals relating to the council's submission of such service to a competitive process.

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

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Subchapter D. Evaluation of Proposals

• 1 TAC §401.61, §401.62

The new sections are proposed under the Texas Civil Statutes, Article 601b, Article 15, which provide the council with the authority to promulgate rules to carry out the purpose of that article.

§401.61. Minimum Requirements for Proposals. Proposals must include:

- (1) price;
- (2) a detailed statement of the number of individuals and the salary levels of those individuals connected with the performance of the work, including employees, independent contractors or subcontractors, and others, and including detailed information regarding any contractors or subcontractors who qualify as historically underutilized businesses;
- (3) a detailed description of health care benefits to be provided for the individuals who will receive compensation in connection with the performance of the work, and the cost to the proposer of providing such benefits;
- (4) a detailed description of retirement benefits to be provided for the individuals who will receive compensation in connection with the performance of the work, and the cost to the proposer of providing such benefits;
- (5) a detailed description of workers compensation insurance to be provided for the individuals who will receive compensation in connection with the performance of the work, and the cost to the proposer of providing such benefits; and
- (6) any other information requested by the council.

§401.62. Evaluation.

(a) Upon receipt of a proposal, the council may evaluate a proposal by considering the following factors:

- (1) the information provided by the proposer as required by §401.61 of this title (relating to Evaluation);
- (2) the information provided by a state agency as required by §401.81 of this title (relating to Duties of Affected State Agencies); and
- (3) any other information the council deems relevant to the proposal.

(b) The council may provide further guidelines or procedures for evaluating proposals, and may include such guidelines or procedures in the specifications for a particular contract or in any related written document as the council deems necessary or

advisable.

(c) Following its evaluation of a proposal, the council may either reject the proposal or direct a state agency to:

- (1) accept the proposal on behalf of the state; and
- (2) enter into negotiations with the proposer aimed at reaching a contractual agreement to provide the identified state service, on terms consistent with the proposal and the council's actions in connection therewith.

(d) A contract executed by a state agency pursuant to subsection (c) of this section must be approved by the council before such contract shall be effective, which approval must be evidenced by the signature of an authorized member of the council.

(e) The council shall have the authority to enter into a contract on behalf of a state agency, if the council determines that the state agency has not made a good faith effort to comply with the council's instructions under subsection (c) of this section.

(f) After all proposals have been evaluated fully and the council has made its determination under subsection (c) of this section regarding the course of action to be taken with respect to a proposal, the council shall provide to any party on request a brief written statement of the results of the evaluation.

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

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Subchapter E. Duties of Affected State Agencies

• 1 TAC §401.81 §401.82

The new sections are proposed under Texas Civil Statutes, §111.002, Article 601b, Article 15, which provide the council with the authority to promulgate rules to carry out the purposes of that article.

§401.81. Duties of Affected State Agencies.

(a) The council may prescribe the format to be used by state agencies in pro-

viding any information to the council, and may require an agency to adhere to any other guidelines, procedures or instructions concerning cost accounting, auditing, or any other pertinent activity, including but not limited to, use of the council-approved cost methodology.

(b) The council may require an agency to conduct one or more public hearings on any aspect of a state service, or to prepare an agency in-house cost estimate, a management study or any other studies, reviews, cost estimates, or other information-gathering activities in connection with any aspect of a state service under review by the council.

(c) The council may require an agency to provide information to the council, perform such tasks and engage in any process deemed advisable by the council in connection with any effort by the council to review a state service, or to submit an identified state service to competition.

(d) Once the council has designated a state service as an identified state service, it may instruct an affected state agency not to enter into any contract that impairs the council's review and potential bidding of such service, including any contract directly relating to the delivery of all or a portion of the identified state service. The council may grant a waiver to an affected state agency if the agency provides a written justification that the council finds meritorious.

(e) A state agency shall comply fully with all requirements and instructions made or given by the council in the performance of its duties or the exercise of its powers.

§401.82. Disposal of Surplus and Salvage Property.

(a) State agencies that determine they have surplus or salvage property as a result of a contract entered into at the direction of the council must inform the council of the kind, number, location, condition, original cost or value, and date of the acquisition of such property.

(b) Unless the council directs a different disposition, any property determined to be surplus or salvage property by the council must be transferred, sold, or disposed of by the state agency in accordance with Texas Civil Statutes, Article 601b, Article 9.

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

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Subchapter F. Monitoring of Services

• 1 TAC §§401.101-401.104

The new sections are proposed under Texas Civil Statutes, §111.002, Article 601b, Article 15, which provide the council with the authority to promulgate rules to carry out the purposes of that article.

§401.101. Monitoring. In connection with contracts awarded under this chapter, the council shall develop guidelines for:

- (1) monitoring the implementation and performance of contracts; and
- (2) evaluating the success or failure of contracts.

§401.102. Minimum Monitoring Guidelines. Guidelines for monitoring must include, at a minimum, provisions for:

- (1) periodic reporting by the service provider regarding any performance standards, benchmarks and requirements established under its contract, which reports shall be reviewed by the council or its staff;
- (2) ensuring contract compliance (e.g., wage rates, equipment charges, rental rates);
- (3) verifying that all services, material, labor, and equipment were actually received, used or consumed in accordance with the contract provisions;
- (4) initiating change orders;
- (5) making on-site inspections, where possible, and reporting and comparing the findings with the contract provisions;
- (6) surveying satisfaction of users of the identified state service;
- (7) following up on complaints; and
- (8) analyzing cost effectiveness.

§401.103. Security Requirements. When directing a state agency to enter into contracts relating to an identified state service, the council may require the state agency to utilize reasonable methods of securing the successful proposer's performance, including but not limited to requiring performance bonds, letters of credit, or payment provisions that provide for retainage. The council shall consider the quality of any alternative security proposed in connection with the proposal.

§401.104. Historically Underutilized Businesses. The council is committed to assisting historically underutilized businesses in their efforts to participate in contracts to be awarded by the council, and to achieving an overall minimum of 30% participation in contracts awarded by the council by historically underutilized businesses. The council shall take positive steps to inform historically underutilized businesses of opportunities to provide identified state services that it determines may better be provided through a competitive process.

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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John Poulard
Executive Director, General Services Commission
State Council on Competitive Government

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TITLE 4. AGRICULTURE
Part I. Texas Department of Agriculture
Chapter 11. Herbicide Regulations

• 4 TAC §§11.1-11.9

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

The Texas Department of Agriculture (the department) proposes the repeal of §§11.1-11.9, concerning general requirements for application of regulated herbicides. The department in a separate submission is proposing new sections to replace the sections repealed in this submission. The department proposes to repeal §§11.1-11.9 in order to replace these sections with new sections which more clearly set forth the requirements for application of regulated herbicides, licensing requirements for dealers of regulated herbicides, and requirements for inspection and licensing of application equipment used to apply regulated herbicides. The department also proposes to repeal the sections in order to propose new sections that include new record keeping requirements and a change in the requirements for payment of spray permit fees.

Steve Bearden, assistant commissioner for pesticide programs, has determined that for

the first five-year period the sections are repealed and enforcement and administration of the new replacement sections are in effect there will be fiscal implications for state government. The effect on state government for the first five-year period the sections will be repealed will be an estimated reduction revenue of \$48,000 per year, likewise, there will be a reduction of \$39,000 in the cost of administering the proposed repealed sections. There will be no fiscal implications for local government or for local employment as a result of enforcing or administering the sections. There will be a reduction in cost of compliance for both small and large businesses due to a 100% reduction in spray permit fees and the elimination of the monthly reporting requirements for herbicide dealers.

Comments on the proposal may be submitted to Steve Bearden, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*. The department plans to hold public hearings to receive public comment on the proposed repeal and the proposed adoption of the herbicide regulations replacing these sections. Notice of these hearings will be published in the *Texas Register*.

The repeals are proposed under Chapter 75 of the Texas Agriculture Code, which authorizes the department to enforce the provisions of this chapter through criminal and administrative actions.

§11.1. Counties Regulated.

§11.2. County Special Provisions.

§11.3. Regulated Herbicides.

§11.4. Definitions.

§11.5. Dealers.

§11.6. Applicators.

§11.7. Registration and Specification of Equipment.

§11.8. Requirements for Special County Provisions.

§11.9. Penalties.

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 August 31, 1993.

TRD-9328384

Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

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For further information, please call: (512) 463-7583

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• 4 TAC §§11.1-11.10

The Texas Department of Agriculture (the department) proposes new §§11.1-11.10, concerning general requirements for the regulation of herbicides. The department, in a separate submission, is proposing the repeal of §§11.1-11.9 and is replacing those sections with the new sections included in this submission. The proposed new sections are intended to make the regulations clearer and more consistent with recent changes in Chapter 75 of the Texas Agriculture Code made by the 73rd Legislature, 1993. The department is authorized to regulate the use of herbicides under the Texas Herbicide Law, Texas Agriculture Code, Chapter 75. The new sections are intended to clarify the rights and responsibilities of all entities affected by Chapter 75 of the Texas Agriculture Code. New §11.1 contains the list of regulated counties. New §11.2 contains special provisions for regulated counties. New §11.3 sets forth the list of regulated herbicides. New §11.4 contains definitions necessary for interpreting Chapter 11. New §11.5 sets forth the requirements for herbicide dealers regarding multiple business locations, license requirements, fees for a dealer's license, payment of fees, expiration of dealer's license, sales records, and submission of such records to the department. New §11.6 pertains to the general requirements for herbicide applicators, as well as, expiration of permits, exempt methods of application, high volatile herbicides, and suspension of permit requirements. New §11.7 addresses registration and specification of equipment; this section also clarifies existing requirements for the registration and specification of equipment used in regulated herbicide application. New §11.8 gives the department the authority to investigate complaints involving regulated herbicides. New §11.9 deals with the requirement for special county provisions and sets forth the existing requirements for counties to follow in order for the department to adopt special county provisions. New §11.10 provides penalty provisions.

Steve Bearden, assistant commissioner for pesticide programs, has determined that for the first five-year period the new sections will be in effect there will be fiscal implications to state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the new sections will be in effect will be an estimated loss in revenue of \$22,500 per year. There will be no fiscal implications for local government or for local employment as a result of enforcing or administering the new sections. There will be a reduction in the cost of compliance for both small and large businesses due to a 100% reduction in the spray permit fee and the elimination of the monthly reporting requirements for herbicide dealers.

Mr. Bearden also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a

result of enforcing the sections will be the assurance that regulated herbicides are distributed and used in a manner to prevent hazards to desirable vegetation and the public. The anticipated economic cost to persons who are required to comply with the new sections as proposed will be a 100% reduction in the cost of spray permits for the first five years for individuals making applications of regulated herbicides. The anticipated economic cost to persons who are required to comply with the new section as proposed for the first five years for individuals requiring equipment inspections will be a 100% reduction in the cost of equipment inspections for the first five years.

Comments on the proposal may be submitted to Steve Bearden, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 77111. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*. The department plans to hold public hearings to receive public comment on the proposed new sections. Notice of these hearings will be published in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §75.003, which authorizes the department to adopt by rule a list of regulated herbicides for the state or for one or more designated areas in the state; §75.021, which gives the department the authority to adopt rules concerning the use of a regulated herbicide in a county in which a commissioner's court has entered an order, §75.005, which authorizes the department to adopt rules prescribing information to be requested of dealers and allows the department to request submission of such records by a licensee, §75.006, which authorizes the department to require spray permits and to allow exemptions from the permit requirements; §75.012, which authorizes the department to adopt rules for the application of regulated herbicides; §75.013, which authorizes the department to adopt rules prescribing the information to be kept by applicators; §75.014, which authorizes the department to require a showing of proof of financial responsibility by commercial applicators; §75.015, which authorizes the department to investigate complaints involving regulated herbicides; §75.016, which authorizes the department to regulate application equipment; §75.017, which authorizes the department to hold public hearings to consider requests for a revision of a rule, and exemption from a requirement of this chapter, or a prohibition of the spraying of a regulated herbicide in an area; and §75.018, which authorizes the department to enforce the provisions of this chapter and rules adopted thereunder; and §75.022, which authorizes the department to enforce the provisions of this chapter through criminal and administrative actions.

§11.1. *Counties Regulated.* The following counties shall be subject to all of the provisions of the Texas Agriculture Code, Chapter 75, unless specifically excepted by provisions of §11.2 of this title (relating to County Special Provisions): Aransas, Austin, Bailey, Bell, Bexar, Brazoria,

Brazos, Briscoe, Burleson, Calhoun, Cochran, Collin, Collingsworth, Cottle, Culberson, Dallas, Dawson, Deaf Smith, Delta, Dickens, Dimmit, Donley, El Paso, Falls, Foard, Fort Bend, Gaines, Galveston, Hall, Hardin, Harris, Haskell, Hidalgo, Houston, Hudspeth, Jackson, Jefferson, Karnes, Kaufman, King, Knox, Lamar, Lamb, Liberty, Loving, McLennan, Martin, Matagorda, Midland, Milam, Motley, Newton, Orange, Parmer, Rains, Refugio, Robertson, Rockwall, Runnels, San Patricio, Swisher, Travis, Tyler, Waller, Ward, Wharton, Wilbarger, and Williamson.

§11.2. *County Special Provisions.*

(a) Aransas. No permit is required for spraying regulated herbicides during the months of January and February.

(b) Austin.

(1) Only that portion of Austin County lying east and south of the line beginning at the point where State Highway 36 crosses the north county line, thence southerly along Highway 36 to FM 949; thence westwardly along FM 949 to the San Bernard River is regulated by the Texas Agriculture Code (the Code), Chapter 75, as amended, and regulations adopted thereunder.

(2) Between March 15th and July 31st, in that portion of Austin County lying south of Interstate Highway 10, the following restrictions on the use of 2,4-D formulations shall apply:

(A) the application by aircraft is prohibited.

(B) the use of all ester formulations by any method is prohibited.

(c) Bailey.

(1) For the period beginning on October 1 of one calendar year through May 1 of the following calendar year, no permit will be required for the use of the regulated herbicides in that part of Bailey County defined by the following landmarks: South of Highway Number 746 from Texas/New Mexico state line extending east to Highway Number 214; then south on Highway Number 214 to the intersection of Highway Number 214 and Highway Number 746; then proceeding east on Highway Number 746 to the Bailey/Lamb County Line

(2) Aerial application of regulated herbicides is prohibited in the area described in this subsection during the regulated period.

(3) For the period beginning on October 1 of one calendar year through

April 15th of the following calendar year, no permit will be required for the use of regulated herbicides in that part of Bailey County defined by the following landmarks: North of Number 746 from Texas/New Mexico state line extending east to Highway Number 214, then South on Highway Number 214 to the intersection of Highway Number 214 and Highway Number 746; then proceeding east on Highway Number 746 to the Bailey/Lamb County line.

(4) Except as provided in these subsections, the aerial application of regulated herbicides is prohibited except that the aerial application of dicamba is allowed in the area described in this subsection during the regulated period. The aerial application of regulated herbicides may be used during the regulated periods provided the user obtains a permit from the Texas Department of Agriculture (the department) prior to use.

(d) Brazoria.

(1) For that portion of Brazoria County both north of State Highway 35 and west of Highway 288, the aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.

(2) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.

(3) For that portion of Brazoria County not included in paragraph (1) of this subsection, the aerial application of regulated herbicides is prohibited between March 25th and August 1st of each year.

(4) The use of high volatile herbicides is prohibited.

(5) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton counties, for purposes of this subsection, are considered as one unit, and paragraphs (1) and (3) of this subsection are not to be changed without a public hearing for the unit as a whole.

(e) Brazos. That portion of Brazos County lying east of the Brazos River and west of the following described line shall be regulated by the Code, Chapter 75, as amended, and regulations adopted thereunder. The eastern boundary of the regulated area is as follows:

(1) beginning at the intersection of State Highway Number 6 and Old San Antonio Road (OSR), which point is on the north boundary line of Brazos County; thence in a southwesterly direction along OSR to its intersection with an unnamed gravel road approximately one mile north of FM 1687; thence easterly along FM 1687 to its intersection with a gravel road known as Stasny Road; thence southwesterly along Stasny Road to a 90 degree turn and continuing in a southeasterly direction to its

intersection with State Highway 21 West; thence along Highway 21 in a westerly direction to its intersection with Jones Road; thence in a southeasterly direction along Jones Road to its intersection with FM 60; thence northeast along FM 60 to its intersection with the southwest property line of Easterwood Airport; thence southeast along the southwest line of Easterwood Airport to the most southerly corner of the airport property; thence in an easterly direction along the most direct line to the closest point on Dowling Road; thence northeast along Dowling Road to its intersection with an unnamed gravel road extending from Dowling Road to the town of Wellborn; thence southeast along said unnamed gravel road to its intersection with FM 2154 at the town of Wellborn; thence generally south and southeast along FM 2154 to its intersection with State Highway 6; thence southeast along State Highway 6 to its intersection with the Navasota River, which is the southern boundary of Brazos County;

(2) that portion of Brazos County lying east of the line described in the paragraph (1) of this subsection shall be exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder.

(f) Briscoe.

(1) The aerial application of regulated herbicides shall be prohibited from May 1-September 1 of each year in that portion of Briscoe County that lies above the Caprock Escarpment, such area to be designated as Zone 1.

(2) The aerial application of regulated herbicides will be allowed in Zone 1 between September 2 and October 1 of each year with the requirement of a permit.

(3) The aerial application of regulated herbicides shall be prohibited from May 1-October 1 of each year in that portion of Briscoe County that lies below the Caprock Escarpment, such area to be designated as Zone 2.

(4) Only 2,4-D amine and dicamba may be applied by ground applications with the requirement of a permit.

(5) No permit is required for the application of regulated herbicides from October 2-April 30 of the following year.

(g) Burleson.

(1) The application of regulated herbicides by aircraft in Burleson County is prohibited. In no case shall regulated herbicides be used to treat any area that is nearer than two miles to any susceptible crops.

(2) Between April 1 and September 15th of each year, the following restrictions on the use of 2,4-D formulations shall apply.

(A) Only amine formulations may be used with a boom-type sprayer for ground applications in that area beginning at Milam County line; thence south along FM Road 1362 to FM Road 166; thence east to FM Road 2039; thence south to FM 60; thence west on FM 60 to Davidson Creek; thence south along Davidson Creek to Washington County line to Brazos River; thence north along Brazos County line to Milam County line, the place of the beginning.

(B) Cluster nozzles are prohibited in the area designated in subparagraph (A) of this subsection.

(h) Calhoun.

(1) The aerial application of all formulations of 2,4-D is prohibited between March 10th and September 15th of each year.

(2) No permit is required for spraying regulated herbicides during the months of January and February of each year.

(3) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton counties, for purposes of this subsection, are considered as one unit and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(i) Cochran.

(1) The use of 2,4-D ester is prohibited for the period beginning April 25th and ending October 15th of each year.

(2) The aerial application of all regulated herbicides is prohibited for the period beginning April 25th and ending October 15th of each year.

(3) A permit for application of all regulated herbicides is required for the period beginning January 1st and ending on December 31st of each year.

(j) Collingsworth.

(1) No permit is required in Collingsworth County for the spraying of regulated herbicides between November 1st and April 1st of the following year.

(2) No regulated herbicides shall be applied to range or field crops between May 15th and October 15th of each year, except for that northeast part of the county north of the Salt Fork of the Red River and east of U.S. Highway 83.

(k) Cottle. The application of regulated herbicides is prohibited between June 1 and October 15th of each year.

(l) Dawson.

(1) No permit is required for the application of the regulated herbicides dur-

ing the period from October 1 to April 15 of the following year.

(2) All ester formulations and/or other high volatile formulations of 2,4-D shall be prohibited.

(3) A permit is required for the ground application of 2,4-D amine and dicamba during the regulated period from April 16-September 30 of each year.

(4) The aerial application of dicamba only is allowed with the requirement of a permit during the regulated period from April 16-September 30 of each year.

(m) Deaf Smith. The use of all butyl ester formulations of 2,4-D and/or all high volatile formulations of 2,4-D is prohibited between April 15th and October 1st of each year.

(n) Delta. The aerial application of regulated herbicides is prohibited between April 15th and September 1st of each year.

(o) Dickens.

(1) No permit is required for the application of regulated herbicides during the period beginning September 1 and ending May 15 of the following year.

(2) Permits are required for applications of regulated herbicides during the period beginning May 16 and ending June 10 of each year.

(3) The application of all regulated herbicides is prohibited during the period beginning June 11 and ending August 31 of each year, except for dicamba, which may be applied with the requirement of a permit.

(p) Dimmit.

(1) Only that portion of Dimmit County within the area beginning at the intersection of the centerline of U.S. Highway 83 and the Dimmit-Zavala County line; thence in a southerly direction following the centerline of U.S. Highway 83, through Carrizo Springs, Texas, and Asherton, Texas, to its intersection with FM Road 190 East; thence in a northeasterly direction following the centerline of FM Road 190 to its intersection with State Highway 85; thence in an easterly direction following the centerline of State Highway 85 to its intersection with FM Road 65; thence following the centerline of FM Road 65 to its intersection with the Dimmit-Zavala County line; thence in a westerly direction following the Dimmit-Zavala County line to the place of beginning is regulated by the Code, Chapter 75, as amended, and regulations adopted thereunder.

(2) Aerial application of regulated herbicides in the regulated portion of Dimmit County is prohibited.

(q) Foard. That portion of Foard County within the area described as follows is regulated by the provisions of the Code,

Chapter 75, as amended, and regulations adopted thereunder, for the period beginning May 25 and ending October 10 of each year: all of that portion of Foard County lying east of a line which has its origin beginning at a point where the Pease River intersects the east boundary line of Section 509, Block A, H. and T.C.R.R.C., survey, thence continuing southerly along the adjoining section lines ending at a point of intersection with the 345 KV transmission electric power lines, then, all of the portion of Foard County lying north of a line along the 345 KV transmission electric power lines extending easterly to the Wilbarger County line.

(r) Fort Bend.

(1) The aerial application of all formulations of 2,4-D is prohibited between March 10th and September 15th of each year.

(2) The application of high volatile herbicides is prohibited.

(3) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.

(4) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton counties, for purposes of this subsection, are considered one unit, and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(s) Gaines.

(1) The application of all regulated herbicides is allowed without the requirement of a permit between the dates of October 1 and March 31 of the following year.

(2) A permit is required for the application of the regulated herbicides between the dates of April 1 to September 30 of each year.

(t) Hall. The application of regulated herbicides is prohibited between May 15th and October 15th of each year.

(u) Harris.

(1) The use of high volatile herbicides is prohibited.

(2) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.

(v) Haskell.

(1) No permit is required between November 1st and May 20th of the following calendar year.

(2) Aerial application of regulated herbicides is prohibited between June 2nd and November 1st of each year.

(w) Hidalgo. The regulated portion of Hidalgo County is as follows:

(1) Beginning at north county line and U.S. 281; thence south to FM 495; thence west to State Highway 107 (Conway Drive); thence south to U.S. 83 Expressway; thence west along U.S. 83 to west county line.

(2) All other lands in Hidalgo County are exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder.

(x) Houston. That portion of Houston County within the area described below is regulated by the provisions of the Code, Chapter 75, as amended, and regulations adopted thereunder.

(1) Beginning at a point where Bedias Creek enters Trinity River; thence north with meanders of the river to the point where Highway Number 7 crosses Trinity River; thence east with Highway Number 7 to city limits of Crockett; thence south to Farm Road Number 2110; thence to Pearson Chapel on Farm Road Number 2110; thence on Farm Road Number 3151 south to intersection of Farm Road Number 230 degrees, thence southwest on Farm Road Number 230 to Prison Farm entrance; thence south to Walker County line; thence with Walker and Houston County line to Trinity River and the place of beginning.

(2) All other lands in Houston County are exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder.

(y) Hudspeth.

(1) The use of all ester formulations of regulated herbicides is prohibited between the dates of April 1 and October 15 of each year.

(2) A permit is required for the application of the other formulations of regulated herbicides between the dates of April 1 and October 15 of each year.

(3) A permit is not required for the application of the regulated herbicides between the dates of October 16 to March 31 of the following year.

(z) Jackson.

(1) The aerial application of all formulations of 2,4-D is prohibited between March 10th and September 15th of each year.

(2) No permit is required for the application of regulated herbicides during the months of January and February of each year.

(3) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton counties, for purposes of this regulation, are considered one unit and subsection (1) of this provision is not to be changed without a public hearing for the unit as a whole.

(aa) Karnes. No permit is required for the application of regulated herbicides during the months of January and February of each year.

(bb) King. Aerial application of regulated herbicides is prohibited between June 10 and October 15 of each year.

(cc) Knox. That portion of the county lying north of the Brazos River to its intersection with longitude 99 degrees 35 feet; thence north to latitude 33 degrees 42 feet going west to State Highway 6, then north to the Foard County line, west to King County line; thence south to the Brazos River, is exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder. All other portions of Knox County are required to comply with provisions of the Code, Chapter 75, and regulations adopted thereunder, except that during the period between October 1-March 31 of the following calendar year no permit will be required.

(dd) Lamar.

(1) That portion of Lamar County beginning at the Red River County line on State Highway 271N, which point is the east boundary line of Lamar County; thence on a northwesterly direction along 271 North to the town of Pattonville; thence in a westerly direction from Pattonville along Jefferson Road for a distance of two miles; thence south on unnamed oil top county road 0.9 mile to community of Shady Grove; thence in a westerly direction on unnamed oil top county road for one mile to the intersection of FM 905; thence south one mile on FM 905 to first unnamed oil top county road in community of Plainview; thence in a westerly direction on county road four miles to the town of Biardstown to intersection of FM 1497; thence northwesterly on FM 1497 0.3 mile to Hickory Creek; thence southeasterly on Hickory Creek to North Sulphur River, which is the south boundary line of Lamar County; thence easterly along the south county line to the southeast corner of the county; thence northerly along the east county line to its intersection with Highway 271 North, to the point of beginning is regulated by the Code, Chapter 75 as amended, and regulations adopted thereunder.

(2) Aerial application of regulated herbicides is prohibited in the regulated portion of Lamar County between April 15th and September 1st each year.

(ee) Lamb. During the period between September 15th of one calendar year through April 1 of the following year, no

permit will be required for the following regulated herbicides:

(1) 2-Methyl-4 Chlorophenoxyacetic Acid (MCPA);

(2) Polychlorinated benzoic acids; and

(3) either alone or in mixtures any of the herbicides listed in paragraphs (1) -(3) of this subsection.

(ff) Liberty.

(1) The application of high volatile herbicides is prohibited.

(2) That portion of Liberty County lying south of Luce Bayou from the Harris County line to Highway 321, then the area south of a line from the point where Luce Bayou crosses Highway 321 due east to the Trinity River, then the area east of the Trinity River from this point north to the San Jacinto County line is exempt from the Code, Chapter 75, as amended, and regulations adopted thereunder. All other portions of Liberty County are required to comply with provisions of the Code, Chapter 7, as amended, and regulations adopted thereunder.

(gg) Matagorda.

(1) The aerial application of all formulations of 2,4-D is prohibited between March 10th and September 15th of each year.

(2) The application of high volatile herbicides is prohibited.

(3) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.

(4) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton counties, for purposes of this subsection, are considered as one unit, and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(hh) Motley. No permit is required for the period of November 1 to May 14 of the following year.

(ii) Parmer. No permit is required in Parmer County for applications of regulated herbicides between November 1st and March 31st of the following year. However, the application of all ester formulations of 2,4-D is prohibited between the dates of April 15 and October 1 of each year.

(ij) Refugio.

(1) The application of the ester formulations of 2,4-D by any means is prohibited between the period of March 1st and September 15th of each year. The aerial

application of any formulation of 2,4-D is prohibited between March 10th and September 15th of each year; except that if the County Commissioners court determines that no cotton is growing on that date, in said county, permits may be issued until such time the County Commissioners Court determines that cotton is growing.

(2) No permit is required for the application of regulated herbicides during the months of January and February of each year.

(kk) Robertson.

(1) Persons in that portion of Robertson County, east of State Highway 6, are exempted from requirements of the Code, Chapter 75, as amended, and regulations adopted thereunder.

(2) A permit is required for the application of regulated herbicides in that portion of Robertson County, west of State Highway 6 between the dates of April 1st and September 15th each year.

(ll) Runnels. That portion of Runnels County beginning on the west county line at the point of intersection with the Colorado River, east-southeasterly along the Colorado River to its intersection with U.S. Highway 83, thence north along U.S. Highway 83 to its intersection with the north county line, thence westerly along the north Runnels County line to the northwest corner of the county, thence southerly along the west county line to the Colorado River, the point of beginning, is regulated by the Code, Chapter 75, and regulations adopted thereunder. In regulated areas, no permit is required from October 1st-May 25th of the following year. The application of Ester formulations of regulated herbicides is prohibited from May 26th-September 30th of each year. The application of other regulated herbicides will be allowed beginning May 26th-September 30th of each year provided that a spray permit is obtained prior to each application.

(mm) San Patricio. No permit is required during the period beginning September 1 and ending March 1st of the following year. Application of regulated herbicides during the period of March 2nd-August 31st must be in compliance with the Code, Chapter 75, as amended, and regulations adopted thereunder. Only boom-type equipment can be used, for ground applications with nozzle height not to exceed 24 inches and maximum pressure not to exceed 20 pound per square inch. The use of 2,4-D amine herbicides must meet the following requirements for both ground and aerial applications:

Wind Velocity	Downwind	Upwind
0-5 m.p.h.	Within 16 rows	8 rows
6-10 m.p.h.	1/8 mile	8 rows

(nn) Swisher.

(1) The application of 2,4-D ester is prohibited for the period beginning April 20 and ending September 1 of each year.

(2) The aerial application of all 2,4-D is prohibited for the period beginning April 20th and ending September 1 of each year.

(3) The application of 2,4-D amine, dicamba and MCPA by ground is allowed at any time throughout the year.

(4) A permit for application of a regulated herbicide will be required between April 20 and September 1. A permit for application of a regulated herbicide will not be required from September 2 to April 19 of the following year.

(oo) Wharton.

(1) The aerial application of all formulations of 2,4-D is prohibited in that portion of Wharton County east of the Colorado River between March 10th and September 15th of each year

(2) The application of all formulations of 2,4-D by any method is prohibited during the period beginning March 10 and ending October 1 of each year, in that portion of Wharton County lying west of the Colorado River.

(3) The use of high volatile herbicides is prohibited.

(4) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.

(5) Brazoria, Calhoun, Fort Bend, Jackson, Matagorda, and Wharton counties, for purposes of this subsection, are considered as one unit, and paragraph (1) of this subsection is not to be changed without a public hearing for the unit as a whole.

(pp) Wilbarger.

(1) No permit is required for the application of regulated herbicides during the period of September 16 to May 9 of the following calendar year.

(2) The application of the following regulated herbicides is prohibited during the regulated period beginning May

10th and ending September 15th of each year:

(A) 2,4, 5-Trichlorophenoxyacetic Acid (2,4,5-T);

(B) Ester formulations of 2, 4-Dichlorophenoxyacetic Acid (2,4-D);

(C) 2-Methyl-4-Chlorophenoxyacetic Acid (MCPA).

(3) The aerial application of polychlorinated benzoic acids and 2,4-D amine is prohibited during the regulated period except during the period of May 10 and ending May 20th of each year. Ground applications of polychlorinated benzoic acids and 2,4-D Amine may be made during the regulated period with the requirement of a permit.

(4) Research conducted by the Texas A&M University System under the auspices of brush and weed control, using all regulated herbicides, will be allowed during the regulated period. Aerial applications must provide a buffer zone of at least five statute miles from any susceptible crops, and wind velocity must not exceed ten miles per hour during application. Research will be allowed during the period beginning May 15th and ending September 15th of each year. The department shall be notified before the commencement of such research projects.

§11.3. Regulated Herbicides.

(a) Because of their potential to cause adverse effects to non-targeted vegetation, all herbicide products containing the following active ingredients, alone or in mixtures, shall be classified as regulated herbicides when distributed in containers of a capacity larger than one quart for liquid material or two pounds for dry or solid material. If the products are marketed using metric measures, the classification applies to containers larger than one liter or one kilogram, respectively:

(1) 2,4-Dichlorophenoxyacetic acid (2,4-D);

(2) 2,4,5-Trichlorophenoxyacetic acid (2,4,5-T);

(3) 2-Methyl-4-Chlorophenoxyacetic acid (MCPA);

(4) 3, 6-Dichloro-o-anisic acid (dicamba).

(b) Formulations containing the active ingredients listed in subsection (a) of this section are exempt from being classified as regulated herbicides if they meet one of the following criteria:

(1) specialty fertilizer mixtures packaged in containers of 50 pounds or less that are labeled for ornamental use and registered in the Code, Chapter 63 (1981), (relating to Commercial Fertilizer); or

(2) products that are ready for use and require no further mixing or dilution before use and are packaged in containers with a capacity of one gallon or less for liquid formulations and four pounds or less for dry or solid materials.

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

Applicator—An applier of regulated herbicides; any person applying regulated herbicides in this state by aircraft, ground, or hand spraying equipment who has been licensed or certified in accordance with the Texas Agriculture Code, Chapter 76, and regulations adopted thereunder.

Code—The Texas Agriculture Code.

Commercial applicator—An applicator of regulated herbicides licensed in accordance with the requirements of the Texas Agriculture Code, §76.108 and §7.13 of this title (relating to Commercial Applicator License).

Commissioner—The commissioner of agriculture of the State of Texas, or his designee.

Dealer—Any person who sells, wholesales, distributes, offers, or exposes for sale, exchanges, barter, or gives away within or into this state any regulated herbicides.

Department—Texas Department of Agriculture.

Equipment—Any type of ground, aquatic, or aerial equipment or device employing motorized, mechanical, or pressurized power and used to apply a regulated herbicide to land or to anything that may be

inhabiting or growing on the land. The term does not include a pressurized hand-sized apparatus used to apply a regulated herbicide or any equipment or device for which the person applying the regulated herbicide is the source of power or energy used in making the application.

Formulation—The mixture of active and inert ingredients for practical use as a pesticide, such as wettable powder, granular and emulsifiable concentrate.

Person—Any individual, firm, partnership, association, corporation, company, joint stock association, or body politic, or any organized group of persons whether incorporated or not; including any trustee, receiver, assignee, or similar representative thereof.

Pesticide—A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, including but not limited to fungicides, herbicides, insecticides, nematocides, rodenticides, desiccants, defoliants, or plant growth regulators.

Volatility—The tendency of a substance to change from a liquid or solid to a gaseous state. It is the movement of a pesticide in a gaseous state in the air from surface water, soil or vegetation. For example, the volatility of different types of regulated herbicides under comparable environmental conditions is as follows:

(A) sodium and ammonium salts. These are generally not considered as volatile;

(B) amine salts. These are generally not considered as volatile. The alkylamines include monomethylamine, dimethylamine, isopropylamine, triethylamine, and others. The alkylanolamines include diethanolamine, triethanolamine, and mixed isopropanolamines;

(C) low-volatility esters. These contain esters that suppress volatility. Formulations include butoxyethanol, propylene glycol, tetrahydrofurfuryl, propylene glycol butyl ether, butoxy propyl, ethylhexyl, and isooctyl ester. These contain various pounds of acid equivalent per gallon; and

(D) highly volatile esters. These include methyl, ethyl, butyl, isopropyl, octylamyl, and pentyl esters containing various concentrations expressed in pounds of acid equivalent per gallon.

Weed—Any plant growing where not wanted.

§11.5. Dealers.

(a) Requirements. Distribution by retailers, distributors, wholesalers, ware-

house agents, and manufacturers of regulated herbicides, require the dealer to hold a valid dealer's license before any distribution is made.

(b) Multiple business locations. In the event a person operates a business at more than one location in the state of Texas under the same firm name, a separate dealer's license shall be required for each location.

(c) License. Any dealer distributing regulated herbicides in this state, or out-of-state dealers distributing regulated herbicides in this state, must have a dealer's license and record all distributions, regardless of whether or not the regulated herbicides distributed are to be used in a regulated or unregulated county.

(d) Fees for a dealer's license. All dealers, as defined in §11.4 of this title (relating to Definitions), shall pay a fee of \$100 upon submitting an application for a dealer's license.

(e) Checks. All checks for license fees required by these regulations shall be made payable to the Texas Department of Agriculture.

(f) Expiration of dealer's license. All dealer licenses issued in accordance with these regulations shall expire on December 31st of each year.

(g) Distribution records. All dealers are required to make and retain for a period of two years from the date of distribution, a record of distribution of regulated herbicides. Such records of each distribution shall consist of the following information:

(1) the name, address, licensed or certified applicator number, or dealer license number of the person to whom the regulated herbicide was distributed;

(2) the date of distribution;

(3) the brand name and EPA registration number;

(4) the quantity of regulated herbicide distributed; and

(5) if the distribution is made to a nonlicensed person acting under the authorization of a certified or licensed applicator:

(A) the name of the nonlicensed person to whom the regulated herbicide is made available and the address of the residence or principal place of business of that person as stated on a valid driver's license or other current state, county, or tribal identification document issued to the nonlicensed person, and

(B) verification that the regulated herbicide is made available to a nonlicensed person. This verification shall

be accomplished by a statement signed by the licensed or certified applicator that the nonlicensed person is the duly authorized representative of the licensed or certified applicator and that the regulated herbicide made available to the nonlicensed person will only be used by a certified or licensed applicator or under the direct supervision of the licensed applicator. This statement may be made on a form prescribed by the department.

(h) Distribution record to the department. Upon written request by the department, a licensed dealer shall submit records of distribution of regulated herbicides, except that out-of-state dealers that do not have a location in the State will be required to submit distribution records to the department not later than the tenth day of each month a record of all regulated herbicides distributed during the prior month. Forms for submitting such distribution records listing the required information shall be furnished by the department.

§11.6. General Requirements for Applicators. The following requirements are applicable to all persons applying regulated herbicides.

(1) Spray permits. No person shall apply regulated herbicides without first obtaining a permit for such application. A blanket permit may be issued to a licensed or certified applicator who shall submit to the department a supplemental report of each regulated herbicide application within seven days following such application.

(A) Expiration of permits. All permits expire when the acreage for which the permit was granted has been sprayed, or 180 days after issuance, whichever occurs first.

(B) Exempt methods of application. Applications of regulated herbicides by brush, mop, wick, basal treatment, or injection method are hereby exempt from the requirements of obtaining a permit.

(C) High volatile herbicides. Spraying high volatile herbicides is prohibited when there are susceptible crops within a four mile radius from every point of the land to be sprayed.

(2) Commercial applicators.

(A) It shall be the joint responsibility of the person in control of the crop and, if applicable, the commercial applicator to insure that the application of regulated herbicides is made in compliance with the rules and regulations issued by the department.

(B) All persons engaged in the application of regulated herbicides for hire must be licensed by the department under §7.13 of this title (relating to Commercial Applicator License) and meet the requirements of financial responsibility under §7.14 of this title (relating to Commercial Applicator Proof of Financial Responsibility) or of the Structural Pest Control Board as provided by the Structural Pest Control Act, Texas Civil Statutes, Article 135b-6.

(C) Applications by an applicator licensed by the Texas Structural Pest Control Board in turf and weed control for structural pest control applications are exempt from the permit requirements of this section.

(3) Persons other than commercial applicators. All persons applying regulated herbicides to lawns are exempt from the permit requirements of this section.

(4) Records. The applicator shall keep the following records for a period of two years:

(A) the date and time of day each application started;

(B) the name of the person for whom the application was made (owner or lessee);

(C) the location of the land where the application was made, stated in a manner that would permit inspection by authorized parties;

(D) the regulated herbicide applied, including:

- (i) product name;
- (ii) its EPA registration number;
- (iii) rate of product per unit; and
- (iv) total volume of spray mix, dust, granules, or other materials applied per unit;

(E) the name of the pest for which it was used;

(E) the site treated (for example: name of crop, etc.);

(G) total acres or volume of area treated;

(H) wind direction, velocity, and air temperature;

(I) the FAA "N" number of aerial application equipment, or identification number of other types of application equipment, or decal number affixed to the application unit; and

(J) the name and department license number of the applicator.

§11.7. Registration and Specification of Equipment.

(a) Requirements for spray operations. All spraying of regulated herbicides must conform to these requirements in a regulated county regardless of whether or not a permit is required.

(1) Maximum pressure for aerial equipment. It is unlawful for a person to spray regulated herbicides with aerial application equipment at an outlet pressure which exceeds 30 pounds per square inch.

(2) Maximum pressure for ground equipment. It is unlawful for a person to spray regulated herbicides with ground equipment when the equipment outlet pressure exceeds 40 pounds.

(b) Maximum velocity. No person shall spray regulated herbicides when the wind velocity exceeds ten miles per hour or as specified on the product label, if the label is more restrictive.

(c) The application of regulated herbicides in dust form is prohibited unless:

(1) all particles of the herbicide can pass through a United States standard ten-mesh sieve; and

(2) not more than 1.0% of the particles can pass through a United States standard 60-mesh sieve.

(d) Commercial applicator equipment.

(1) Application equipment used by commercial applicators, except pressurized hand-sized apparatus or any equipment or device for which the person applying the pesticide is the source of power or energy used in making pesticide application, must be registered with the department. The department shall issue to the licensee a license decal to be attached to each such piece of equipment in a conspicuous place. The license decal will contain the following information:

(A) an identification number; and

(B) the name of the department.

(2) The licensee shall notify the department of any equipment changes and

remove the license decal before giving up possession of the equipment.

(e) All application equipment used by commercial applicators is subject to inspection by the department at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the department finds that it is not, the department shall require the needed repairs or adjustments before allowing the use of such equipment.

(f) Persons other than commercial applicator. Equipment used by persons other than commercial applicators may be inspected, but proof of financial responsibility is not required for the equipment or the person.

§11.8. Complaint Investigation.

(a) Any person with cause to believe that any provision of this chapter has been violated may file a written complaint with the Texas Department of Agriculture. The department will continue to accept either written or oral notification of a complaint, but may require that a complaint form be signed in order to conduct an investigation.

(b) Any person who has experienced or is alleging adverse effects from a pesticide application may file a written complaint with the department. Such complaint shall be subscribed by the complaining party and set forth in detail the facts of the alleged violation.

(c) The department will investigate the complaint and make a full written report.

(1) A preliminary report may be given to the parties directly involved in the incident. In cases where no apparent adverse effects can be documented, the department will give the information to the complaining party and cease the investigation.

(2) The final report will be made after all aspects of the case have been determined to the satisfaction of the department. This report will be made available to the parties concerned upon written request. The final report will prevail over the preliminary report if a conflict should arise.

(d) The department shall, as soon as possible, notify the applicator(s) believed to be responsible for the complaint and the owner or lessee of the land where the application occurred.

(e) The department will not estimate monetary losses sustained.

(f) No finding of violation by the department will be premised solely on the uncorroborated statements of an anonymous or unidentified complainant. For each such

complaint, the department will determine the extent of investigation which is appropriate to address the complaint.

§11.9. Requirements for Special County Provisions.

(a) The department shall not accept for adoption any request for special county provisions which will, except as provided by and consistent with the Code, Chapter 75, as amended, and regulations adopted thereunder, either directly or indirectly:

(1) exempt applicators from obtaining spray permits, except during periods when susceptible vegetation is at a minimum;

(2) exempt applicators from record keeping requirements;

(3) exempt commercial applicators from requirements for proof of financial responsibility;

(4) prohibit the distribution of any herbicide; and/or

(5) require the department to inspect land prior to issuance of spray permits.

(b) The department may consider for adoption a request by a county to:

(1) regulate or prohibit methods of application;

(2) prohibit application of any regulated herbicide during any period of the year; and/or

(c) exempt from the provisions of the Code, §§75.006-75.016, as amended, any portion of a county which can be identified by easily recognizable physical boundaries.

§11.10. Penalties. Any person who commits an offense under the Code, §75.024, as amended, or rules adopted thereunder, shall be guilty of a Class A misdemeanor. In addition, the Code, §76.1555, which provides for the assessment of administrative penalties, applies to a person who violates Chapter 75 or these regulations.

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 August 31, 1993.

TRD-9328383

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 463-7583

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.21

The Public Utility Commission of Texas proposes an amendment to §23.21, concerning billing adjustments made pursuant to House Bill 11, 72nd Legislature, First Called Special Session. The proposal makes a number of minor changes and clarifications to the existing rule. First, the proposal deletes a reference to dominant exchange carriers. Second, it clarifies that a utility may make a mid-course correction to its billing adjustment factor. Third, the proposal authorizes rolling a surcharge or refund into the following year's true-up if the refund or surcharge is small. Fourth, the proposal clarifies a reference to the interest rate to be used. Fifth, the proposal clarifies how interest on the refund or surcharge is to be calculated. Sixth, the proposal moves a misplaced sentence. Finally, the proposal delays the true-up filing by two months in order to allow utilities to have year-end numbers.

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

Mr. Slocum also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the more efficient processing of House Bill 11 cases. There will be no impact on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposal (13 copies) may be submitted to John Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Comments should be submitted within 30 days after publication of the proposed section and should refer to Project Number 12222.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonable required in the exercise of its power and jurisdiction.

The following statute is affected by this proposed rule: Texas Civil Statutes, Article 1446c, §43(j).

§23.21. *Cost of Service.*

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

(d) Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991.

(1) Each utility that is subject to the commission's rate setting jurisdiction, pays state franchise taxes, and has not had a rate proceeding under the Act, §42 or §43, in which the effects of House Bill 11 were considered in the setting of rates shall be subject to this subsection. Except as provided in the following sentence, on or before December 1 of each year, each utility subject to this subsection shall file with the commission a tariff sheet, or tariff sheets, applicable to each rate class setting forth an interim House Bill 11 tax adjustment factor. If a utility chooses not to request an increase under this subsection or if the utility has otherwise limited itself by agreement to recovering tax changes that are the subject of this subsection by a method different from that prescribed in this subsection, the utility need not file tariff sheets but shall make an informational filing showing its calculations including an explanation and all underlying supporting documentation showing the effect of House Bill 11 on its taxes. If the adjustment is a decrease that amounts to less than \$.50 cents per customer for electric utilities [and dominate interexchange carriers] or access line for [all other] telephone utilities on an annual basis, the tariff shall not include a factor, but shall state that the reduction will be applied against the adjustment for future years. In all other tariffs, the factors set forth in the tariff sheets shall be calculated as set forth in the following paragraphs. Utilities that are required to file tariff sheets shall include an explanation of how the interim factor was calculated as well as showing all the calculations. For state taxes to be paid during 1992, all utilities subject to this subsection shall make the initial filing as soon as practical, but no later than 90 days, after the adoption of this rule.

(2) If the adjustment is a decrease requiring a factor or the utility affirmatively requests that an adjustment be made to its billings to account for the effect of House Bill 11 on its state taxes, the tariff filing will be docketed and will automatically go into effect on January 1 of the year following the filing. If the adjustment is a decrease being carried forward to future years, the filing will be treated as a tariff filing except that it shall take effect on January 1 of the year following the filing. A utility may amend a tariff filed under this subsection to make mid-course corrections as necessary. For all amended filings, [the initial filing,] all tariffs will take effect on the date specified by the utility, but in no event earlier than ten days after the filing.

(3) The interim House Bill 11 tax adjustment factor shall be calculated by

allocating the effect on the utility's state taxes for the next calendar year of House Bill 11 as provided in paragraph (6) of this subsection. The effect on the utility's state taxes for the coming calendar year shall be calculated by subtracting the estimated state taxes that would be attributable to the calendar year if the law prior to House Bill 11 was still in effect from the estimated state taxes that will be due or are attributable to the calendar year under House Bill 11. In calculating the state taxes that would be due during the calendar [alendar] year if the law prior to House Bill 11 was still in effect, four-twelfths of the franchise tax paid or that would have been paid in the previous year and eight-twelfths of the franchise tax that would have been paid in the calendar year in question will be considered attributable to the calendar year in question. For 1992 alone, the taxes attributable to the calendar year under House Bill 11 shall also include four-twelfths of the franchise taxes paid in 1991. In performing the calculation, the various fees imposed by House Bill 11 will not be considered taxes. In calculating the taxes that are estimated to be paid, changes resulting from audits or amended returns for previous periods that were covered by this rule shall be considered. The state franchise tax imposed by House Bill 11 will be considered to be a franchise tax and not an income tax regardless of the method of calculation.

(4) If an interim factor goes into effect, it shall be subject to surcharge or refund to the extent it differs from the factor finally set by the commission. If a surcharge or refund is necessary, a credit or surcharge will be made to the existing customers' bills. If the refund or surcharge amount is less than \$.50 per customer, calculated by dividing the total refund or surcharge by the total number of customers, the utility may make the refund or surcharge by carrying it forward for a year and considering it when calculating the next year's final factor. Simple interest will be added to the amount due at the rate set by the commission for overbillings and underbillings starting at the beginning of the month in which the obligation accrued and ending on the last day of the month preceding the refund or surcharge. The month, or months, in which the obligation accrues will be determined by comparing the collections each month under the tariff filed by the utility with the amount that should have been collected had the utility been able to precisely predict its tax bill and its sales. The number of days in each month shall be considered for purposes of the interest [this] calculation. Interest will be added to decreases that are carried to future years and will be calculated by the same method. [If the adjustment necessary to account for the effect of House Bill 11 is so small that it would be

difficult to adjust on a monthly basis, the utility may provide in its tariff sheet(s) an interim adjustment factor of zero and request that the adjustment be performed by the use of a factor during a single month.]

(5) The utility shall file, on the first business day after February 1 of the year following the year that a particular factor was in effect, [December 14] testimony supporting the final adjustment factor that it is requesting to account for the effect of House Bill 11 on its state taxes for that year. The utility's filing will include a copy of the Franchise Tax Return filed with the Comptroller's Office and the details of their computation of the tax that would have been due had House Bill 11 not been enacted. The hearing on the merits for purposes of setting the final factor, if necessary, shall be convened no earlier than March 15 [February 1 of the year following the filing of the testimony] and shall be strictly limited to issues under this subsection. For purposes of administrative efficiency, the hearings examiner assigned to a case may grant a utility's request that the final hearing on a particular year's factor be delayed for up to three years; however, if such a request is granted, any interest to be paid by the utility shall be at the utility's cost of capital as determined in the utility's last rate case.

(6) The billing adjustment should apply over the entire year; however, if the adjustment necessary to account for the effect of House Bill 11 is so small that it would be difficult to apply on a monthly basis, the utility may make the billing adjustment during a single month. Cost allocation and rate design are as follows.

(A)-(B) (No change.)

(7) (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 September 7, 1993.

TRD-9328441

John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: October 15, 1993

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

◆ ◆ ◆
• 16 TAC §23.23

The Public Utility Commission of Texas proposes an amendment to §23.23, concerning fuel factor and reconciliation filings and scheduling of reconciliation cases. The pro-

posal would require utilities to use a commission application when filing fuel factor and reconciliation cases. The proposal would also allow the presiding officer the flexibility to take more than a year to process reconciliation cases if the current transitional deadlines result in a number of utilities filing at the same time. Finally, the proposal corrects an error regarding the effective date of the 1993 amendments.

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

Mr. Slocum also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the greater uniformity of filings and thus, greater efficiency in the processing of fuel factor and reconciliation cases. In addition, the flexibility to schedule cases will allow greater efficiency in the use of state resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposal (13 copies) may be submitted to John Rentrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Comments should be submitted within 30 days after publication of the proposed section and should refer to Project Number 12223. The commission also requests commenters to comment on the proposed applications, copies of which may be obtained from the staff.

The amendment is proposed pursuant to the Public Utility Regulatory Act, §16(a), which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction.

The following statute is affected by this proposed rule: Texas Civil Statutes, Article 1446c, §43(g).

§23.23. Rate Design.

(a) (No change.)

(b) Recovery of Fuel and Purchased-Power Costs.

(1) Purpose. The commission will set an electric utility's rates at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital and to recover its reasonable and necessary expenses, including the cost of fuel and purchased power. The commission recognizes in this connection that it is in the interests of both utilities and their ratepayers to adjust customer charges in a timely manner to account for changes in

certain fuel and purchased-power costs. Pursuant to the Public Utility Regulatory Act, (the Act) §43(g)(2), this subsection establishes a procedure for setting and revising fuel factors and purchased-power cost recovery factors and a procedure for regularly reviewing the reasonableness of the fuel expenses recovered through fuel factors.

(2) Fuel factors.

(A)-(B) (No change.)

(C) Petitions to revise fuel factors. On the first business day of the months specified in subparagraph (E) of this paragraph, each utility using one or more fuel factors may file a petition requesting revised fuel factors. A copy of the filing shall also be delivered to the General Counsel and the Office of Public Utility Counsel. Each petition must be accompanied by the commission prescribed fuel factor application and supporting testimony that includes the following information:

(i)-(ii) (No change.)

(D)-(G) (No change.)

(3) Reconciliation of fuel expenses. Utilities shall file petitions for reconciliation on a periodic basis so that any petition for reconciliation shall contain a maximum of three years and a minimum of one year of reconcilable data and will be filed no later than six months after the end of the period to be reconciled. However, notwithstanding the previous sentence, a reconciliation shall be requested in any general rate proceeding under the Act, §43 and may be performed in any general rate proceeding under the Act, §42. Upon motion and showing of good cause, a fuel reconciliation proceeding may be severed from or consolidated with other proceedings.

(A) Petitions to reconcile fuel expenses. In addition to the commission prescribed reconciliation application, [all fuel related schedules from the commission's rate filing package required for general rate proceedings], a fuel reconciliation petition filed by a utility must be accompanied by supporting testimony that includes the following information:

(i)-(viii) (No change.)

(B)-(C) (No change.)

(D) Procedural schedule. Upon the filing of a petition to reconcile fuel expenses in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the proceeding within

one year after a materially complete petition was filed. However, if the deadlines imposed by paragraph (6) of this subsection result in a number of utilities filing cases within 45 days of each other, the presiding officers shall schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether such procedural schedule enables the commission to issue a final order in each of the cases within one year after a materially complete petition is filed.

(4)-(5) (No change.)

(6) Effective date of the January, 1993 amendments; transition period. The January, 1993 amendments to this subsection are effective May 1, 1993. However, with respect to individual utilities, all fuel-related revenues collected through a fuel factor in effect before the effective date of a fuel factor established under the 1993 [1992] amendments shall be reconciled under commission rules and orders in effect before the effective date of the 1993 [1992] amendments. Notwithstanding paragraph (3) of this subsection, no utility shall be required to file a separate fuel reconciliation petition earlier than one year after the effective date of this subsection, and utilities for which fuel expenses have been reconciled for any of the 18 months preceding the effective date of this subsection shall not be required to file a separate fuel reconciliation petition earlier than two years after the effective date of this subsection. The definition of eligible fuel expense in this section shall apply except to the extent the definition is inconsistent with a commission order signed (before or after promulgation of this rule) in connection with a case filed before the effective date of this section, in which case such order shall apply to fuel expenses incurred until a final order is signed in the utility's first base rate case after the effective date of this section.

(7)-(8) (No change.)

(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 September 7, 1993.

TRD-9328443 John M Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: October 15, 1993

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



Chapter 24. Policy Statements

Electric

• 16 TAC §24.1

The Public Utility Commission of Texas proposes new §24.1, concerning utilities' programs to comply with the Clean Air Act Amendments of 1990. The proposed new rule is in the form of a policy statement, expressing the Commission's encouragement for conservation and renewable energy programs, as means of complying with the Clean Air Act.

Title IV of the Clean Air Act Amendments of 1990 established a new regulatory scheme for reducing the emissions of sulfur-dioxide from electric utilities. Sulfur-dioxide (SO₂) is believed to be one of the causes of acid rain, and the new Federal legislation creates a nationwide limit on SO₂ emissions. Under this new scheme of regulation, a utility will be permitted to emit SO₂ from a powerplant only if it holds an allowance for each ton of emissions. Utilities will be granted a number of allowances, in accordance with the terms of the Act, and utilities that need additional allowances can buy them from other utilities. The buying, selling, or trading of allowances is intended to achieve the reductions in emissions required by the Act at the least cost to society.

The Act also requires the Environmental Protection Agency (EPA) to issue up to 300,000 bonus allowances as an incentive to utilities to provide service to their customers through conservation and renewable energy. Conservation and renewable energy programs are means for utilities to meet their customers' needs for electric service that do not involve SO₂ emissions. Whether utilities apply for and receive these bonus allowances or not, they can use conservation and renewable energy resources to meet part of their customers' demand, without SO₂ emissions. The proposed rule would encourage utilities to use these programs and to apply for the bonus allowances. Many of the large utilities in Texas operate generating plant that emit SO₂, and it is expected that they will need allowances to continue operating these plants, in order to meet the needs of their customers.

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

Mr. Totten also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section includes the reduction in emissions of sulfur-dioxide from utility power plants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposal (13 copies) may be submitted to John Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 11232.

The new section is proposed under Texas Civil Statutes, Article 1446c, §16(a), which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

The following statute is affected by this proposed rule: Texas Civil Statutes, Article 1446c, §16 and §54.

§24.1. Policy Concerning Conservation and Renewable Energy Measures.

(a) Purpose. The purpose of this section is to prescribe the policy of the commission with respect to conservation and renewable energy measures and the bonus allowances that are available, under the Clean Air Act Amendments of 1990, §404(f), for utilities that adopt qualified energy conservation and renewable energy measures.

(b) Policy concerning conservation and renewable energy. Electric utilities should consider the benefits of conservation and renewable energy resources in their planning to meet the electric service needs of their customers. In particular, utilities should consider the ability of these resources to reduce utility emissions of sulfur dioxide, nitrogen oxides, and other air emissions.

(c) Policy concerning bonus allowances for conservation and renewable energy. Electric utilities that adopt conservation and renewable energy resources should consider the benefits of applying for bonus allowances, under the Clean Air Act Amendments of 1990, §404(f), for these resources.

(d) Expediting proceedings related to bonus allowances. The commission will, subject to the priority of cases with statutory time limits, expedite applications for commission certification that a utility's conservation and renewable energy programs are consistent with its least-cost plan or least-cost planning process.

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 September 7, 1993.

TRD-9328442
John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: October 15, 1993

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

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

**Chapter 72. Staff Leasing
Services**

- 16 TAC §§72.1, 72.10,
72.20-72.22, 72.60, 72.70, 72.71,
72.80-72.83, 72.90, 72.91

The Texas Department of Licensing and Regulation proposes new §§72.1, 72.10, 72.20-72.22, 72.60, 72.70, 72.71, 72.80-72.83, 72.90, and 72.91, concerning staff leasing service companies. Texas Civil Statutes, Article 9104 and Article 9100, provide the department with the authority to regulate, administer, and license staff leasing services.

James D. Brush, II, director, Policies and Standards Division, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated increase in revenue of \$992,500 per year for fiscal years 1994-1998. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the health and welfare of staff leasing service employees and clients. The cost of compliance with the sections for small businesses will be \$1,500 per year for a license. The anticipated economic cost to persons who are required to comply with the sections as proposed will be \$600 per year for a license.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, (512) 463-3097.

The new sections are proposed under Texas Civil Statutes, Article 9104 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§72.1. Authority. These rules are promulgated under the authority of the Staff Leasing Services Act, Texas Civil Statutes, Article 9104, and Texas Civil Statutes, Article 9100.

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

The Act—The Staff Leasing Services Act, Texas Civil Statutes, Article 9104.

Assigned employee—A full-time employee whose normal work week is at least 25 hours per week and whose work is performed in this state.

Application—A fully completed application form, all information required by the application form, fingerprints as required and all required fees.

Good moral character—A personal history of honesty, trustworthiness, fairness, a good reputation for fair dealing, and respect for the rights of others and for the laws of this state and nation.

Limited basis—When the principal place of business of a staff leasing service is out of state and the service employs fewer than 20 assigned employees in this state.

§72.20. Licensing Requirements—General.

(a) Any person who performs or offers to perform staff leasing services as defined by the Act, after February 28, 1994, must first become licensed with the Texas Department of Licensing and Regulation.

(b) Any person who desires an original or renewal staff leasing services license shall obtain all necessary forms from the Texas Department of Licensing and Regulation.

(c) A person whose license has expired and who wishes to continue staff leasing services shall apply for a new license and pay all fees of a new license.

(d) To obtain a "Limited" license an applicant must prove that fewer than 20 employees are assigned to work locations in Texas and must meet all other provisions of the Act and these rules.

§72.21. Licensing Requirements.

(a) A falsification is cause for denial and/or revocation of license.

(b) The annual license application shall:

(1) state the name, physical address, and telephone number of the place of business and residence of the person or individual making the application;

(2) certify that the applicant is 18 years of age or older;

(3) have attached a sworn notarized biographical history of: each controlling person; each person holding 10% or more of the voting stock of a corporation seeking to offer staff leasing services; or any individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company seeking to offer staff leasing services through ownership of voting securities, by contract, or any other means;

(4) include a disclaimer advising applicant of required background check

through appropriate local, state, or federal law enforcement agencies;

(5) have attached completed fingerprint card provided with the application; and

(6) state whether the applicant is currently providing or intends to provide insurance and if so identify the insurer providing the insurance and the type of insurance being provided.

(c) The license application shall be updated within 30 days after a material change to any of the information in the application. Failure to provide updated information shall be grounds for denial and/or revocation of the license.

§72.22. License Certificate.

(a) The license certificate shall be numbered.

(b) The license certificate shall have the name, address, and telephone number of the licensee.

(c) The certificate shall have the names of each controlling person printed on the front of the certificate.

(d) All licenses expire one year from the date of issuance.

§72.60. Responsibility of Department-Background Check.

(a) The department shall inquire with the Texas Employment Commission, the Texas Department of Insurance, the Texas Workers' Compensation Commission, the Texas Attorney General, and the Texas Department of Public Safety about violations, complaints, charges, convictions, or other appropriate information.

(b) The department shall make inquiries as to the licensee's corporate affiliations, partnerships, or other affiliations as may be necessary to determine who may be controlling persons as defined by the Act, §1(5)(a) and (b).

§72.70. Responsibility of Licensee-General.

(a) A licensee may not allow any person to act as a controlling person, as defined, unless that person is listed on the licensing application and has submitted a personal information form supplied by the Department.

(b) All licensees shall notify employees and service recipients of the name, mailing address, and telephone number of the department.

(1) Notification shall be made a part of all contractual agreements between licensees and clients.

(2) Each employee of a licensee shall receive a 2-inch by 3-inch notification card with the appropriate information.

(c) The licensee shall have each employee sign a notification of service agreement, as required by the Act, §6, Staff Leasing Services Agreement, which shall be kept on file for two years after employment is terminated.

(d) All licensees and all controlling persons of a licensee shall read and be familiar with the Act and associated rules.

§72.71. *Responsibility of Licensee-Records.* Upon notification the licensee shall allow the commissioner or his designee to audit records required by the Act and any records required by the Administrative Rules.

§72.80. *Fees-Licensing Application.* The application/administrative fee shall be \$750 per application. This fee is Non-Refundable.

§72.81. *Fees-Licensing.* The licensing fee shall be:

(1) \$1,500 for 0 to 249 assigned employees;

(2) \$2,000 for 250 to 750 assigned employees; and

(3) \$2,500 for more than 750 assigned employees. This fee is refundable only if a license is not issued or renewed.

§72.82. *Fees-Background Check.* The non-refundable background check fees shall be:

(1) \$600 for a business/corporation check; and

(2) \$600 for each controlling person(s).

§72.83. *Fees-Duplicate Licensing/Name Change.* The fee shall be \$50 for issuing a duplicate license or for a license name change.

§72.90. *Sanctions-Administrative Sanctions/Penalties.* If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative sanctions and/or recommend administrative penalties in accordance with this Act or Texas Civil Statutes, Article 9100, and Chapter 60 of this title (relating to the Texas Department of Licensing and Regulation).

§72.91. *Sanctions-Revocation, Suspension, or Denial Because of a Criminal Conviction.*

(a) Pursuant to Texas Civil Stat-

utes, Article 6252-13c, the commissioner, after a hearing, may suspend or revoke an existing license because the licensee or a controlling person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the area in which the licensee or controlling person is licensed. The commissioner may also, after hearing, suspend, revoke, or deny a license because of a person's felony probation, parole revocation, or revocation of mandatory supervision.

(b) Pursuant to this Act a license may be denied by the commissioner without a hearing if it determined that the applicant or a controlling person listed on the Staff Leasing Service application has been convicted of a felony or misdemeanor related to workers compensation, health benefit plans, unemployment taxes, payroll, or other staff leasing or employee related offenses. The applicant may request and will be granted a hearing if a request is made within 20 days of written notification of denial.

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 September 7, 1993.

TRD-9328420

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

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 463-3127

TITLE 19. EDUCATION Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter H. Approval of Off-Campus and Out-of- District Instruction for Pub- lic Colleges and Universities

• 19 TAC §5.156

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

The Texas Higher Education Coordinating Board proposes the repeal of §5.156, concerning Consideration of Courses Offered in Texas by Non-Texas Public Institutions of

Higher Education. This section is being repealed and its essential contents are being transferred to §5.211 and §5.217 in order to implement more effectively the intent of the Education Code, Chapter 61, Subchapter H.

Bill Sanford, assistant commissioner for universities and health affairs, 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. Sanford also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the improvement of the Coordinating Board's effectiveness in preventing deception of the public resulting from the conferring and use of fraudulent or substandard college or university degrees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeal is proposed under the Texas Education Code, §61.403, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Consideration of Courses Offered in Texas by Non-Texas Public Institutions of Higher Education.

§5.156. Consideration of Courses Offered in Texas by Non-Texas Public Institutions of Higher Education

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 September 1, 1993.

TRD-9328329 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-6160

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Subchapter K. Private Degree-Granting Institutions Operating in Texas

• 19 TAC §§5.211, 5.213, 5.217, 5.222

The Texas Higher Education Coordinating Board proposes amendments to §§5.211, 5.213, 5.217, and 5.222, concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas. The rules were amended to clarify the Coordinating Board's statutory authority over off-campus activities

or nonexempt institutions when those activities fall short of the definition of "branch campus" found in §5.211. Section 5.222 was amended editorially to conform more precisely to the Administrative Procedure and Texas Register Act. The changes will be applied in the Coordinating Board's consideration of requests from nonexempt institutions of higher education seeking to operate degree programs or degree-credit courses in Texas as provided in the Education Code, Chapter 61, Subchapters G and H.

Bill Sanford, assistant commissioner for universities and health affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Sanford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that enforcing the proposed rules could improve the Coordinating Board's effectiveness in preventing deception of the public resulting from the conferring and use of fraudulent or substandard college or university degrees as provided in the Education Code, §61.301. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under the Texas Education Code, §61.311, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas.

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

Out-of-state public institution of higher education—Any senior college, university, technical institute, junior or community college, or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

§5.213. Administrative Procedures Related to Certification of Nonexempt Institutions.

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

(c) **Jurisdiction.** The board will accept applications only from those institutions proposing to offer an academic degree program or credit courses alleged to be applicable to a degree.

(d) **Certification Advisory Council.** The board shall appoint a certification advisory council to advise the board on standards and procedures related to certification

of private, nonexempt [nonaccredited] institutions of higher education; assist the commissioner in the study of individual applications for certificates of authority; and help on any other matters related to certification that the board finds appropriate. The council shall consist of six members with experience in higher education and drawn from exempt private institutions of higher education in Texas. The members shall be appointed for two-year fixed and staggered terms.

(e) (No change.)

(f) **Application forms.**

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

(4) **The application form for authorization to offer off-campus degree-credit courses in Texas shall contain, at minimum, the name, address, and telephone number of the institution; purpose of the institution; names of the sponsors or owners of the institution; the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board; the names of members of the faculty who will, in fact, teach the courses in Texas, with the highest degree held by each; a full description of the admission requirements, degree requirements, degree or degrees to which the course or courses will apply; and a description of the computer, library, and other facilities that will be utilized by the institution to offer the proposed courses.**

(g)-(i) (No change.)

§5.217. Off-Campus Operations, [and] Changes of Level at Exempt Institutions, and Out-of-State Public Institutions.

(a) (No change.)

(b) **Occasional Courses.** An exempt private institution may offer occasional degree-credit courses at off-campus sites in Texas without prior approval of the board. Nonexempt private institutions must request prior board approval for all off-campus credit courses using forms provided by the board.

(c)[(b)] **Branch Campuses at Certified Schools [Branch Campus].** A certified but unaccredited institution may not operate a branch campus.

(d)[(c)] **Changes of Level for Exempt Private Institutions.** An institution which is exempt by accreditation from a recognized agency and which has established stability by being so accredited for the previous ten years and which wishes to expand to a different degree level not covered by its existing accreditation may submit a description of its plans, including such information as provided for on an applica-

tion form furnished by the board, instead of seeking a certificate of authority. If the plan is found to be acceptable, the institution will be granted state authorization by the commissioner to seek the change in level with the accrediting agency. If the plan is found to be unacceptable, the institution may seek a certificate of authority by the procedures listed in §5.215 of this title (relating to Certificate of Authority To Grant Degrees and Offer Courses at Nonexempt Institutions).

(e) **Out-of-State Public Institutions of Higher Education.** An out-of-state public institution of higher education as defined in §5.211 (relating to Definitions) must have approval of the Coordinating Board to offer a course or a grouping of courses within the State of Texas (the Education Code, Chapter 61, Subchapter H). The institution must submit a description of its plans prior to the offering of the courses, including such information as provided for on an application form furnished by the board. The application will be subject to review under the rules in this title (relating to Private, Nonexempt Institutions of Higher Education).

§5.222. Judicial Procedures for Nonexempt Institutions.

(a) An institution whose application for a certificate of authority, amendment to a certificate of authority, or certificate of registration is denied or whose existing certificate is revoked, shall receive a written notice of the reasons for the denial or revocation. [The institution may request a hearing before the board to seek administrative remedy. The hearing shall be held within 120 days after written request is received by the board, but not sooner than 30 days after receipt of notice from the aggrieved.]

(b) The institution may request a hearing before the board to seek administrative remedy. The board shall conduct hearings in accordance with the Administrative Procedure 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.

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James McWhorter
Assistant Commissioner for
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Texas Higher Education
Coordinating Board

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For further information, please call: (512) 483-6160



Chapter 5. Program Development

Subchapter O. Offering of Small Classes by Public Senior Colleges and Universities

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

• 19 TAC §§5.301-5.303

The Texas Higher Education Coordinating Board proposes the repeal of §§5.301-5.303, concerning Offering of Small Classes by Public Senior Colleges and Universities (Funding). The rules are being repealed and rewritten to be consistent with legislative intent expressed in Senate Bill 5. Some hours not now eligible for state funding will be eligible for funding in the future.

Bill Sanford, assistant commissioner for universities and health affairs, 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. Sanford also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that it may encourage universities to offer some classes that would otherwise not be offered. 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 Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under the Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Offering of Small Classes by Public Senior Colleges and Universities (Funding).

§5.301. General Provisions.

§5.302 Funding.

§5.303. 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

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For further information, please call: (512) 483-6160

◆ ◆ ◆ • 19 TAC §5.301, §5.302

The Texas Higher Education Coordinating Board proposes new §5.301 and §5.302, concerning Offering of Small Classes by Public Senior Colleges and Universities. The rules are being changed to be consistent with legislative intent expressed in Senate Bill 5. Some hours not now eligible for state funding will be eligible for funding in the future.

Bill Sanford, assistant commissioner for universities and health affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Sanford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that it may encourage universities to offer some classes that would otherwise not be offered. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Offering of Small Classes by Public Senior Colleges and Universities.

§5.301. General Provisions. In compliance with the Texas Education Code, §51.403(d), the Texas Higher Education Coordinating Board sets forth the following guidelines for use by public senior colleges and universities for the offering of small classes.

(1) Organized small classes may be offered in any institution as authorized by the appropriate governing board within the following guidelines. An organized small class may be offered which:

(A) is a required course for graduation (the course is not offered each semester or term, and, if canceled, may affect the date of graduation of those enrolled);

(B) is a required course for majors in this field and should be completed this semester (or term) to keep proper sequence in courses;

(C) is a course in a newly established degree program, concentration, or support area;

(D) are interdepartmental (cross-listed) courses taught as a single class by the same faculty at the same station, provided that the combined courses do not constitute a small class;

(E) is a first-time offering of the course;

(F) is class size-limited by accreditation or state licensing standards;

(G) is class size-limited by availability of laboratory or clinical facilities; or

(H) is voluntarily offered by a faculty member in excess of the institutional teaching load requirement and for which the faculty member receives no additional compensation.

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

Organized classes—Classes whose primary mode of instruction is lecture, laboratory, seminar, or group television instruction.

Small classes—Undergraduate-level classes with less than 10 registrations, and graduate-level classes with less than five registrations.

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

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Subchapter P. Testing and Remediation

• 19 TAC §5.318

The Texas Higher Education Coordinating Board proposes an amendment to §5.318, concerning Testing and Remediation (Institutional Reporting). The rules are necessary because the auditors refuse to audit for compliance with the Coordinating Board's ability

to request monies due for non-compliance to be returned to the state. The effect of the change will be to allow the Coordinating Board to redirect money to the state when TASP non-compliance is discovered at post-secondary public institutions

Bill Sanford, assistant commissioner for universities and health affairs, has determined that there will be fiscal implications as a result of enforcing or administering the rule. In the first community college audit in which TASP was included, two million dollars would have been returned to the state as a result of enforcing or administering the rule.

Mr. Sanford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be both increased compliance with the law, rules, and policies of the TASP program, and the return of funds due to non-compliance. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Education Code, §61.027 and §51.306, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Testing and Remediation (Institutional Reporting).

§5.318 Institutional Reporting.

(a) Each institution shall report annually to the board, on or before a day set by rule of the board and in a manner prescribed by the board, data concerning the effectiveness of the institution's remedial program and advising program.

(b) Annual reports on the effectiveness of advising shall contain information about the institution's total advisement program.

(c) Each institution is responsible for full compliance with the Education Code, §51.306, and the rules adopted by the Texas Higher Education Coordinating Board. Failure to comply with the TASP statute and rules by admitting students to take credit hours or the equivalent who have not taken or passed the TASP Test (when applicable), or any other act or omission that results in the accumulation of credit hours or the equivalent in violation of the TASP statute and rules shall be a basis for disallowing those credits by audit, resulting in an adjustment of the dollar amounts of institutional funds. The funding adjustment will be based on credit hours used in the contact hours base-period that have been disallowed as a result of audit.

(d) The State Auditor has the right to audit the TASP programs at in-

stitutions of higher learning for compliance utilizing the TASP statute, rules, and policy manual.

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

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Chapter 9. Public Junior Colleges

Subchapter D. Basic Standards

• 19 TAC §9.63

The Texas Higher Education Coordinating Board proposes an amendment to §9.63, concerning Basic Standards (Admission) Colleges are experiencing an increased number of requests for admission from high school students who have not completed the junior year. The current rules stipulate that waivers for this type of high school student must be granted by the Commissioner of Higher Education or his designee. The rule change would delegate the final decision to the local level: the chief academic officer of each college. Increasingly, admissions applications are received by colleges from students who are taught at home. The current rules address prospective students attending public schools who have not completed high school or prospective students who have dropped out of the public school system. The rule change was needed to provide procedures for admitting children taught at home. The amendments would relegate the final decision on admissions of each type of high school student described above to the local level. The effect of the change would be de-regulation of the admissions process from the state and increased local control.

Dale Campbell, assistant commissioner for community and technical colleges, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Campbell also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be less state control over the admissions of high school students and more local control by the institutions attuned to the needs of their local communities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Education Code, §130.001 and §61.061, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Basic Standards (Admission).

§9.63. Admission. A student may be admitted to a public community [junior] college according to any one of the following conditions:

(1) For admission to the academic curricula, a public community [junior] college shall require that the applicant be a graduate of an accredited high school.

(2) (No change.)

(3) An applicant who has not been graduated from high school under the age of 18 and who attended a non-accredited public or private high school, or who was schooled in a non-traditional setting;

(A) may be admitted on the basis of written examinations or upon the recommendation of the principal or superintendent of the last high school attended. Content of the written examinations shall reflect high-school equivalency and shall be consistent with the minimums for high school completion established by the Texas Education Agency. The form and type of these examinations and the procedure for administering them are to be determined by local policy;

(B) must present a notarized record of the high school equivalent work completed and the date of successful completion; and

(C) must agree to limitations or conditions of admissions established by the institution.

(4)[(3)] A person who is 18 years of age or over may be exempt from the admission requirements of this section and admitted on "individual approval," provided the admitting officer is convinced that the applicant's record indicates ability to carry the college work assigned. Students admitted on this condition shall be subject to the same policies and regulations as all other students.

(5)[(4)] Students enrolling in the terminal curriculum including [vocational-] technical education courses, shall have the same entrance requirements as those listed in this section. A student not meeting the

requirements for admission to a standard academic or general curriculum may be admitted to a terminal program on individual approval if he/she is at least 18 years of age.

(6)[(5)] A student who has completed his/her junior year of high school may[, upon the recommendation of the high school principal,] be permitted to enroll in a community [junior] college upon the recommendation of the high school principal. The class load of such student shall not exceed two college credit courses per semester. However, under special circumstances that indicate a student who has not completed the junior year is capable of college-level work, based on such factors as grade-point average, ACT or SAT scores, and other assessment indicators, the chief academic officer of a higher education institution [the Coordinating Board commissioner] may grant exceptions to the rule.

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

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James McWhorter
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Texas Higher Education
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Chapter 21. Student Services

Subchapter B. Determining Residence Status

• 19 TAC §21.32

The Texas Higher Education Coordinating Board proposes an amendment to §21.32, concerning Tuition Reciprocity with Bordering States or Countries. The proposed amendment is being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. On a reciprocal basis, students from bordering states will be allowed to enroll in technical colleges located within 100 miles from their state border and pay the resident tuition rate. Such students graduating or completing 45 semester credit hours at a technical college shall be entitled to pay resident rates at a Texas public senior upper-level institution located in the same county or an adjacent county to that in which the technical college is located.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the section is in effect there

will be fiscal implications for state or local government as a result of enforcing or administering the section. The fiscal note estimated

lost tuition revenues to equal approximately \$16,000 in the first year, rising to \$63,000 in the fifth year after passage of the bill.

Mr. Adams also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that students from bordering states will be encouraged to enroll in technical colleges in Texas, thus enriching the mix of students on campus; Texas students will be allowed (through reciprocity) to attend technical schools in bordering states at those states' resident tuition rates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Education Code, §54.060, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status.

§21.32 Tuition Reciprocity with Bordering States or Countries.

(a) Residents of a State Bordering Texas. Nonresidents who are residents of a state of the United States bordering Texas are entitled to pay Texas resident rates upon registering in any Texas public technical college or public junior college if the county in which the public technical college is located is within 100 miles of the state in which the nonresident student resides or the district of the public junior [such] college includes any part of a county that is immediately adjacent to the state of the United States in which the nonresidents reside, provided that Texas residents are entitled to pay in-state fees and charges at a similar school in the bordering state. Nonresident public junior college students described in this section who have graduated or completed 45 semester credit hours at an eligible junior college shall be entitled to pay Texas resident rates at a Texas public senior upper-level institution of higher education (those institutions offering only junior, senior, and graduate-level programs) which is located within the Texas public junior college district, [from which the nonresident students have graduated or completed 45 semester credit hours] provided that Texas residents are entitled to pay in-state fees and charges at a similar institution in the bordering state.

(1) Nonresident public technical college students described in this section who have graduated or completed 45 semester credit hours at an eligible technical college shall be entitled to pay resident rates at a Texas public senior upper-level institution which is located in the

same county as the public technical college or a county adjacent to that in which the technical college is located, provided that Texas residents are entitled to pay in-state fees and charges at a similar institution in the bordering state.

(2)[(1)] The admitting Texas public junior college or public senior upper-level institution must have on file a copy of a letter from the Chief Executive Officer of the comparable neighboring state institution which certifies that residents of the involved Texas public junior college district are entitled to pay in-state tuition at the comparable institution. [(2)] To be valid, the certifying letter must have been issued no longer than two years before the start of the involved enrollment period; also, a copy of the letter must be filed with the Texas Higher Education Coordinating Board.

(b) Citizens of Mexico. A citizen of Mexico who registers for instruction offered by a general academic institution in a county bordering Mexico is eligible to pay tuition equal to that charged Texas residents provided the student demonstrates a financial need after the resources of the student and the student's family have been considered.

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

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TRD-9328340 James McWhorter
Assistant Commissioner
Texas Higher Education
Coordinating Board

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For further information, please call. (512) 483-6160

◆ ◆ ◆
• 19 TAC §21.39

The Texas Higher Education Coordinating Board proposes an amendment to §21.39, concerning Determining Residence Status (Glossary). The proposed amendment is being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. The rule will provide institutions a consistent definition for a "homeless individual".

Mack Adams, assistant commissioner for student services has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Adams also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that homeless individuals will be identified consistently by all public institutions. There will be no effect on

small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Education Code, §54.052, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status (Glossary).

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

Homeless Individual—A homeless individual as defined by 42 United States Code, §11302. (See §21.40 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-9328338 James McWhorter
Assistant Commissioner for
Administration
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Coordinating Board

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For further information, please call: (512) 483-6160

◆ ◆ ◆
• 19 TAC §21.40

The Texas Higher Education Coordinating Board proposes new §21.40, concerning Determining Residence Status (Homeless Individual). The new amendments are being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. Homeless individuals will be defined consistently by public institutions of higher education, and those enrolled in vocational education courses at a public junior college will be allowed to register by paying the resident rather than nonresident tuition rate.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Homeless individuals enrolling in vocational education courses at public junior colleges will be able to register by paying the resident rather than nonresident tuition rate. The fiscal note estimated the costs to the state to be \$3,000 per year.

Mr. Adams also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be that homeless individuals will be encouraged to acquire skills to help them join the work force. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Capitol Station, Austin, Texas 78711.

The new section is proposed under the Texas Education Code, §54.052, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status (Homeless Individual).

§21.40. Homeless Individual.

(a) A homeless individual who resides in Texas for the 12-month period immediately preceding the date of registration, but who does not have a permanent residence in Texas, may enroll in vocational education courses at a public junior college by paying the resident tuition rate.

(b) For this purpose, a homeless individual is defined by 42 United States Code §11302, which states, "the term homeless or homeless individual or homeless person includes:

(1) an individual who lacks a fixed, regular, and adequate nighttime residence, and

(2) an individual who has a primary nighttime residence that is:

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations;

(B) an institution that provides temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings."

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-9328339 James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

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For further information, please call: (512) 483-6160

Chapter 21. Student Services

Subchapter J. The Physician Education Loan Repayment Program

• 19 TAC §§21.251-21.265

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21.251-21.265, concerning the Physician Education Loan Repayment Program. The rules are being repealed and rewritten. The changes are required to bring the program into compliance with state law. The amendments will open the program to more physicians.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Adams also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that physician recipients will benefit from the revised provisions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under the Texas Education Code, §61.532 and §61.537, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Physician Education Loan Repayment Program.

§21.251. Purpose.

§21.252. Administration.

§21.253. Delegation of Powers and Duties.

§21.254. Definitions.

§21.255. State-Recommended Health Manpower Shortage Area.

§21.256. Area of Highest Need.

§21.257. Eligible Lender or Holder.

§21.258. Eligible Physician.

§21.259. Eligible Education Loan.

§21.260. State-funded Physician Education Loan Repayment Program.

§21.261. Expanded Physician Education Loan Repayment Program.

§21.262. Priorities of Application Acceptance.

§21.263. Prior Conditional Approval.

§21.264. Repayment of Education Loans.

§21.265. Dissemination of Information.

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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James McWhorter
Assistant Commissioner for
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Texas Higher Education
Coordinating Board

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For further information, please call: (512) 483-6160

• 19 TAC §§21.251-21.266

The Texas Higher Education Coordinating Board proposes new §§21.251-21.266, concerning the Physician Education Loan Repayment Program. The changes are required to bring the program into compliance with state law. The amendments will open the program to more physicians.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Adams also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that physician recipients will benefit from the revised provisions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The new sections are proposed under the Texas Education Code, §61.532 and §61.537, which provides the Texas Higher

Education Coordinating Board with the authority to adopt rules concerning the Physician Education Loan Repayment Program.

§21.251. Purpose. The purpose of the Physician Student Loan Repayment Program is to encourage qualified physicians to practice medicine in designated areas of the state or for specified state agencies. The purpose of the state-funded portion of the program is to encourage qualified physicians to practice medicine in a medically underserved area that is economically depressed or rural, or for the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, the Texas Youth Commission, a Community Health Center, or an approved family practice residency training program. The purpose of the federally-funded portion is to encourage qualified physicians to practice in areas of highest need in Texas.

§21.252. Administration. The Texas Higher Education Coordinating Board, or its successor or successors, shall administer both the state-funded and federally-funded portions of the Physician Education Loan Repayment Program.

§21.253. Delegation of Powers and Duties. The board delegates to the commissioner of higher education the powers, duties, and functions authorized by the Texas Education Code, Chapter 61, Subchapter J.

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

Approved Family Practice Residency Training Program—a graduate medical education program operated by a medical school, licensed hospitals, or nonprofit corporations, which has been approved for training physicians in family practice and for the receipt of state funds for that purpose by the Coordinating Board after receiving the recommendation of the Board's Family Practice Residency Advisory Committee.

Board—The Texas Higher Education Coordinating Board.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

Community Health Center—Any facility in Texas which, under provisions of the United States Public Health Services Act, §§329, 330, and 340, provides health care to the community in which it is located, the migrant, and the homeless, using federal funds.

Economically Depressed Medically Underserved Area—Any economically de-

pressed area or county of the state that is also a State-Recommended Health Professional Shortage Area as defined in §21.255 of this title (relating to State-Recommended Health Professional Shortage Area). Economically depressed areas of the state are those designated as economically depressed by the economic development administration of the United States Department of Commerce. Economically depressed counties of the state are those having a poverty rate of 20% or more as determined by the Texas county poverty population model and estimates developed by the Texas Department of Health and the Texas Department of Human Services. (Portions of counties, facilities, or population groups that are State-Recommended Health Professional Shortage Areas within an economically depressed area or county are considered economically depressed medically underserved areas.)

Economically Depressed or Rural Medically Underserved Area—See "economically depressed medically underserved area" and "rural medically underserved area" of this section. Such an area may also be any State-Recommended Health Professional Shortage Area in the state.

Health Professional Shortage Area (HMSA)—An area of the state designated by the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services, or its successors, as having a shortage of primary health care physicians or psychiatrists.

Pro rata—A proportionate basis upon which payment amounts will be scaled, depending upon the share of a full work-year for state employees.

Rural Medically Underserved Area—Any State-Recommended Health Professional Shortage Area in Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census.

Service period—A 12-month period during which a physician qualifies for repayment of education loans.

§21.255. State-Recommended Health Professional Shortage Area. A State-Recommended Health Professional Shortage Area shall be any area of the State-Recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services, or its successors, as having a shortage of primary health care physicians or psychiatrists.

(1) Denial of designation of the Office of Shortage Analysis does not remove a State-Recommended Health Professional Shortage Area from the list of eligible areas in the state-funded portion of the program.

(2) A State-Recommended Health Professional Shortage Area may be removed from the list of eligible areas in the state-funded portion of the program only after a recommendation to that effect by the Texas Department of Health to the Office of Shortage Analysis.

§21.256. Area of Highest Need. An area of highest need shall be any area, facility, or targeted physicians or patients within any facility or area which meets the criteria described in the Board's federally-approved application for grant funds for the applicable federal program year, under provisions of the National Health Service Corps State Loan Repayment Program (U.S. Public Health Service Act).

§21.257. Eligible Lender or Holder. The board shall retain the right of determining eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of attending post-secondary institutions and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, pension fund, private foundation, or insurance company, provided the education loan conforms to the definition of an eligible education loan in §21.259 of this title (relating to Eligible Education Loan).

§21.258. Eligible Physician. An eligible physician is one who:

(1) is licensed to practice medicine in Texas by the Texas State Board of Medical Examiners and against whom no professional disciplinary action has been taken, and, except in the case of an allopathic general practitioner;

(2) has satisfactorily completed a post-graduate program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association or has earned board specialty within the last six years in one of the following primary care specialties:

(A) in the state-funded program: family practice, osteopathic general practice, obstetrics/gynecology, internal medicine, pediatrics, emergency medicine, general surgery, and psychiatry; or

(B) in the federally-funded (expanded) program, practice specialties named by the U.S. Secretary of Health and Human Services for purposes of this program.

§21.259. Eligible Resident. An eligible resident is one who is licensed to practice medicine in Texas by the Texas State Board of Medical Examiners, has had no professional disciplinary action taken against him/her, and has been accepted for participation in an approved Family Practice Residency Training Program in Texas.

§21.260. Eligible Education Loan. An education loan eligible for repayment is one that:

(1) was obtained through an eligible lender for purposes of attending a post-secondary institution;

(2) is not an education loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(3) does not entail a service obligation, except in the case of a State Medical Education Board Loan whose recipient has provided the first two years of service required in order for the physician to repay the education loan without penalty; and

(4) is not in default at the time of the physician's application.

§21.261. State-funded Physician Education Loan Repayment Program.

(a) The state-funded Physician Education Loan Repayment Program is limited to repayments on education loans on behalf of physicians who practice in economically depressed or rural medically underserved areas of Texas or for one of the following state agencies or programs:

(1) the Texas Department of Health;

(2) the Texas Department of Mental Health and Mental Retardation;

(3) the Texas Department of Criminal Justice;

(4) the Texas Youth Commission;

(5) a Community Health Center in Texas; or

(6) an approved family practice residency training program in Texas.

(b) The commissioner may authorize repayment of eligible education loans made to an eligible physician who shows evidence of a strong service commitment and who:

(1) has submitted the appropriate application to the board;

(2) has completed at least one year of medical practice:

(A) in an economically depressed or rural medically underserved area of the state; or

(B) for one of the four state agencies named in subsection (a) of this section; or

(C) for an approved family practice residency training program.

§21.262. Expanded Physician Education Loan Repayment Program. The expanded Physician Education Loan Repayment Program is limited to federally funded repayments on education loans on behalf of eligible physicians whose service period ended on October 1, 1988, or later. Payments in the expanded program are matched with an equivalent amount of state funds. The Commissioner may authorize repayment of eligible education loans made to an eligible physician who first qualifies for a state-funded repayment and additionally:

(1) has completed at least one year of medical practice in an area of highest need as defined in §21.256 of this title (relating to Highest Need);

(2) has accepted Medicare and Medicaid assignment as full payment for medical services rendered to Medicaid and Medicare patients during the twelve-month service period, as verified by Texas Department of Human Services; and

(3) uses a sliding fee scale or a comparable method of determining payment arrangements for patients who are not eligible for Medicaid/Medicare benefits and who are unable to pay the customary fee for the physicians services received.

§21.263. Priorities of Application Acceptance. Acceptance of applicants will depend on the availability of funds. Renewal applicants in the state-funded and expanded programs will be given priority treatment over first-time applicants. The Family Practice Residency Advisory Committee shall establish priorities among eligible physicians for first-time repayment assistance by taking into account the degree of physician shortage, geographic location, and other criteria the committee considers appropriate.

§21.264. Prior Conditional Approval. Prior conditional approval of applications for repayment of education loans may be granted by the board. For eligible residents such approval may occur no earlier than the beginning of the applicant's first year of residency training; for other eligible physicians, the approval may occur no earlier than the beginning of the applicant's final year of post-graduate training or the beginning of the applicant's year of service

in one of the approved areas defined in this subchapter. Repayments are dependent upon confirmation of resident status, completion of graduate or professional education, and/or employment in one of the approved areas. Repayments are dependent also upon availability of funds. The board may reserve funds for applicants who have received prior conditional approval.

§21.265. Repayment of Education Loans. Eligible education loans of qualified physicians shall be repaid under the following conditions.

(1) A total annual repayment to one or more eligible lenders or holders shall not exceed the applicant's unpaid principal loan balance, including capitalized interest, from all sources or \$9,000 in the state-funded program or \$18,000 in the expanded program, whichever is less.

(2) Repayment shall be made after each year of eligible service has been completed.

(3) Education loan repayment may be renewed annually upon successful completion of the application process, but for no more than a total of five years.

(4) The annual repayment(s) shall be made copayable to the eligible physician and to any eligible lender(s) or holder(s), and must be applied only to the outstanding principal balance of the education loan, including capitalized interest.

(5) The annual repayment may be made for verified full-time service or, for verified part-time service on a pro rata basis.

§21.266. Dissemination of Information. The board shall publish and disseminate information about the Physician Education Loan Repayment program to health-related institutions of higher education, appropriate state agencies, and any interested professional associations.

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 September 1, 1993.

TRD-9328335

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-6160



Chapter 21. Student Services

Subchapter L. Paul Douglas Teacher Scholarship Program

• 19 TAC §§21.301-21.324

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

The Texas Higher Education Coordinating Board proposes the repeal of §§21.301-21.324, concerning Paul Douglas Teacher Scholarship Program. This subchapter is being repealed and rewritten. These changes are required to comply with federal regulations mandated by the Higher Education Amendments of 1992. The changes will benefit the applicants for the scholarship by broadening the selection criteria.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Adams also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be by meeting the needs of the State in addressing teacher shortage areas, including the demand for and supply of early childhood, elementary, and secondary teachers and the demand for teachers with training in specific academic disciplines in the State, the changes will benefit both the student recipients and the State.

Comments on the proposal may be submitted to: Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under the Texas Education Code, §52.54, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Paul Douglas Teacher Scholarship Program.

§21.301. Purpose.

§21.302. Administration

§21.303. Delegation of Powers and Duties.

§21.304. Definitions.

§21.305. Scholarship.

§21.306. Eligible Institutions of Higher Education.

§21.307. Qualifications for Scholarships.

§21.308. *Criteria for Selecting Scholars.*

§21.309. *Award Amounts.*

§21.310. *Criteria for Subsequent Scholarships.*

§21.311. *Application Priority Deadlines.*

§21.312. *Notification of Availability of Congressional Teacher Scholarship.*

§21.313. *Expenditure of Funds.*

§21.314. *Payments to Students.*

§21.315. *Student Status.*

§21.316. *Scholarship Conditions.*

§21.317. *Noncompliance With the Scholarship Conditions.*

§21.318. *Period of Loan.*

§21.319. *Loan Interest.*

§21.320. *Repayment of Loans.*

§21.321. *Minimum Repayment Amounts.*

§21.322. *Deferments.*

§21.323. *Enforcement of Collection.*

§21.324. *Provisions for Disability and Death.*

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 September 1, 1993.

TRD-9328334

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-6160

◆ ◆ ◆
• 19 TAC §§21.301-21.325

The Texas Higher Education Coordinating Board proposes new §§21.301-21.325 concerning Paul Douglas Teacher Scholarship Program. These changes are required to

comply with federal regulations mandated by the Higher Education Amendments of 1992. The changes will benefit the applicants for the scholarship by broadening the selection criteria.

Mack Adams, Assistant Commissioner for Student Services, has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

Mr. Adams 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 by meeting the needs of the State in addressing teacher shortage areas, including the demand for and supply of early childhood, elementary, and secondary teachers and the demand for teachers with training in specific academic disciplines in the State, the changes will benefit both the student recipients and the State.

Comments on the proposal may be submitted to: Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The new rules are proposed under the Texas Education Code, §52.54, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Paul Douglas Teacher Scholarship Program.

§21.301. *Purpose.* The purpose of the Paul Douglas Teacher Scholarship Program is to provide scholarships to enable and encourage outstanding high school graduates and recent GED certificate recipients who demonstrate an interest in teaching to pursue teaching careers at the pre-school, elementary, or secondary level.

§21.302. *Administration.* The Texas Higher Education Coordinating Board, or its successor or successors, shall administer the Paul Douglas Teacher Scholarship Program.

§21.303. *Delegation of Powers and Duties.* The Board delegates to the commissioner of higher education the powers, duties and functions of the Act, as provided in this subchapter.

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

Academic year—The period of time during which a full-time student is expected to complete the equivalent of one of the following:

- (A) two semesters,
- (B) two trimesters,

(C) three quarters.

Act—The Higher Education Act of 1965, as amended.

Approved teacher education program—A course of study leading to certification as a teacher at the preschool, elementary school, or secondary school level, as determined by the Texas Higher Education Coordinating Board.

Award year—The period of time from July 1 of one year through June 30 of the following year.

Board—The Texas Higher Education Coordinating Board.

Capitalized interest—Unpaid accrued interest added to the principal amount.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

Full-time student—A student enrolled in an institution of higher education, other than a correspondence school, who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

Fund—The Paul Douglas Teacher Scholarship fund.

The Governor's Committee—A seven member statewide panel appointed by the Governor for the purpose of selecting scholarship recipients.

Resident of Texas—A legal resident of Texas as defined in the Texas Education Code, §§54.052, 54.054, and 54.055. Non-residents classified as Texas residents for purposes of paying Texas resident tuition and fees are excluded.

Scholar—A scholarship recipient.

Scholarship—An award made to an individual under this subchapter for one academic year.

Scholarship period—The period of time for which the scholarship is intended.

Teacher Shortage Area—As defined by the United States Secretary of Education.

§21.305. *Scholarship.* All scholarships awarded through the Paul Douglas Teacher Scholarship Program are subject to the provisions of the Higher Education Act of 1965, Title V, Part C, as amended, and the regulations thereof (34 Code of Federal Regulations Part 653). Copies of these federal rules and statutes are on file in the offices of the board.

§21.306. *Eligible Institutions of Higher Education.*

(a) Criteria. An eligible institution shall be any institution of higher education which:

- (1) admits as regular students only those persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such certificate;

(2) is legally authorized to provide a program of education beyond secondary level;

(3) provides an educational program for which it awards at least an associate degree;

(4) is a public or other non-profit institution;

(5) is accredited by the Southern Association of Colleges and Schools if the institution is within the state of Texas; or

(6) is currently accredited by a nationally recognized accrediting agency or association that the secretary determines to be a reliable authority as to the quality of training offered in accordance with §1201(A) of the Act if the institution is outside the state of Texas.

(b) Evidence of institution's accreditation status. If the institution is placed on public probation by the appropriate accrediting agency, scholars applying for scholarships shall provide evidence of knowledge of the school's accreditation status as a condition to receiving the scholarship.

(c) Students attending other institutions. Any student attending an institution other than an eligible institution, as set forth in subsection (a) of this section (relating to criteria for eligible institutions), shall not be eligible for a scholarship from the Fund. Scholars who continue to seek certification through an ineligible institution are responsible for repaying the scholarship.

(d) Designation of institutional representative. Unless otherwise specified by the chief executive officer of the institution, the Hinson-Hazlewood College Student Loan Program officer shall serve as the Paul Douglas Teacher Scholarship Program officer for Texas institutions, shall be the board's on-campus agent to certify all institutional transactions and activities with respect to the fund, and shall be responsible for all records and reports reflecting the transactions with respect to the fund.

§21.307. Qualifications for Scholarships. The commissioner may authorize, or cause to be authorized, scholarships to qualified students at any eligible institution, provided the applicant:

(1) is a United States Citizen, National, or permanent resident as defined in 34 Code of Federal Regulations §653.41;

(2) is a legal resident of the State of Texas as defined in these regulations;

(3) has graduated from high school or is scheduled to graduate within three months of the award; or has received a

certificate of high school equivalency for successfully completing the Test of General Educational Development (GED);

(4) ranks in the top ten percent of his or her graduating class; or has GED test scores recognized by the State as being equivalent to ranking in the top ten percent of high school graduates in Texas, or nationally, in the academic year for which the eligibility determination is being made;

(5) maintains satisfactory progress as determined by the institution of higher education the student is attending, in accordance with the criteria established in 34 Code of Federal Regulations §668.16(e) of the student assistance general provisions regulations;

(6) is enrolled full-time in an eligible institution and is pursuing a course of study leading to certification as a classroom teacher; graduate study that is not required for initial certification is not included;

(7) is not ineligible to receive assistance as a result of default on a federal student loan or otherwise, as provided under 34 Code of Federal Regulations §§75.60-75.62; and

(8) has been counselled by the program officer regarding responsibilities to the scholarship program and has signed a statement acknowledging such.

§21.308. Criteria for Selecting Scholars. From among the qualified applicants, the scholars will be selected using the following criteria:

(1) High School and/or College Grade Point Average (GPA) or GED score as applicable;

(2) pursuit of a field of study in a teacher shortage area as determined by the United States Secretary of Education;

(3) financial need as determined by the financial aid administrator at the institution of higher education to be attended by the scholar;

(4) grade level; priority given to juniors and seniors in college; and

(5) Rank given by the Governor's committee based on an essay, extracurricular activities and a teacher recommendation

§21.309. Special Consideration

(a) As required under the Higher Education Amendments of 1992, §523(d), at least 75% of the scholars will be selected on the basis of selection criteria that include criteria to give special consideration to individuals who:

(1) intend to teach or provide related services to students with disabilities,

(2) intend to teach limited English-proficient students;

(3) intend to teach preschool-age children;

(4) intend to teach in schools serving inner city, rural, or geographically-isolated areas;

(5) intend to teach in curricular areas or geographic areas; or

(6) are from disadvantaged backgrounds and from groups historically underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach.

(b) The Board may waive the requirements of subsection (a) of this section for not more than 25% of all individuals receiving a scholarship under this subchapter.

§21.310. Award Amounts. The maximum award to each scholar may be \$5,000 for each academic year not to exceed four years. The amount of the award, when combined with any other Title IV Student Financial Assistance funds awarded to the scholar, may not exceed the scholar's cost of attendance. If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Act, would otherwise exceed the scholar's cost of attendance, as defined for the National Direct Student Loan Program in 34 Code of Federal Regulations §674.11, the scholarship shall not be reduced by the amount in which the combined awards would be in excess of the scholar's cost of attendance, but shall be taken into account in determining eligibility for other forms of financial assistance. Subsequent scholarships will also require certification of the award amount by the financial aid office.

§21.311. Criteria for Subsequent Scholarships. In order to be considered for subsequent scholarships qualified applicants must be:

(1) enrolled as a full-time student in a postsecondary institution that is currently accredited by a nationally recognized accrediting agency or association that the Secretary determines to be a reliable authority as to the quality of training offered, in accordance with the Act, §1201(a);

(2) pursuing a course of study leading to certification as a teacher at the preschool, elementary or secondary level, as recognized by the Texas Higher Education Coordinating Board, but not including graduate study that is not required for initial teacher certification; and

(3) maintaining satisfactory progress as determined by the postsecondary institution the student is attending, in ac-

cordance with the criteria established in 34 Code of Federal Regulations §668.16(e) of the Student Assistance General Provisions regulations.

§21.312. Application Priority Deadlines. A system of priority deadlines will be administered by the board to process applications.

(1) Initial applications arriving at the board on or before June 15 of each year will be given equal priority. Applications received after that date will be processed on a first come-first served basis until funds are depleted.

(2) Subsequent scholarship applications must be received by the board on or before June 15 to ensure the qualified applicant of receiving the full scholarship for which he or she is eligible, provided funds are available.

(3) Eligible applications received after June 15 will be honored as long as funds are available and applications for subsequent scholarships will receive priority. If available funds are insufficient to honor all applications for subsequent scholarships, scholarships will be awarded on the basis of each scholar's ranking.

§21.313. Notification of Availability of Paul Douglas Teacher Scholarship. The financial aid director at each participating institution shall annually inform the dean of the school of education at that institution of the availability of the Paul Douglas Teacher Scholarship funds.

§21.314. Expenditure of Funds. In each award year, the board, if possible, will expend all program funds received from the federal government for that award year and all funds received prior to that award year from principal or interest payments, except that the board may reserve for expenditures in the following award year an amount less than \$5,000 as well as any funds awarded but returned or not expended.

§21.315. Payments to Students.

(a) No payment shall be made to any scholar until he or she has executed a promissory note payable to the fund for the full amount of any authorized scholarship plus interest and other fees. The scholar must execute a commitment to teach full-time in a public or private non-profit pre-school, elementary or secondary school in any state or teach children with disabilities or with limited English proficiency on a full-time basis in a private non-profit institution. The original of such executed promissory note and commitment to teach shall be forwarded immediately to the commissioner.

(b) For the purpose of any contract executed by the scholar, the defense that he or she was a minor at the time he or she executed a promissory note shall not be available to him or her in any action arising on said note.

§21.316. Student Status.

(a) If, during a scholar's enrollment, the scholar ceases to pursue teacher certification, the program officer must notify the board promptly. Further, the program officer must notify the board when a scholar ceases to be enrolled and provide the board with information on how to locate the borrower.

(b) A roster of scholars will be forwarded to each eligible institution by the board prior to the end of each enrollment period. Information on each scholar shall be obtained in a form prescribed by the commissioner.

§21.317. Scholarship Conditions. To receive a scholarship, a scholar shall enter into an agreement with the board under which he or she agrees to the following:

(1) teach on a full-time basis in any state as determined by the institution or agency for which the scholar is teaching, for a period of not less than two years for each year in which scholarship assistance was received or in an area designated by the United States Secretary of Education as provided by the Higher Education Act, §428(b)(4), as amended, one year for each year of scholarship assistance was received in one of the following:

(A) a public or private non-profit pre-school, elementary, or secondary school in any state;

(B) in a private non-profit institution, teach children with disabilities or with limited English proficiency;

(2) fulfill the teaching obligation described in paragraph (1) of this section within ten years after completing the post-secondary education degree program for which the scholarship was awarded;

(3) pursue a course of study leading to certification at the pre-school, elementary or secondary level as recognized by the Texas Higher Education Coordinating Board but not including graduate study that is not required for initial teacher certification;

(4) provide the board evidence of compliance with paragraphs (1)-(3) of this section;

(5) repay the amount of the scholarship received, prorated according to

the fraction of the teaching obligation not completed, as determined by the board, and pay interest and reasonable collection fees if the condition of paragraphs (1)-(4) of this section are not met; and

(6) maintain eligibility for this scholarship through the following:

(A) enroll as a full-time student in an eligible institution;

(B) pursue a course of study leading to certification at the pre-school, elementary, or secondary level as recognized by the Texas Higher Education Coordinating Board but not including graduate study that is not required for initial teacher certification; and

(C) maintain satisfactory progress as determined by the institution of higher education that the scholar is attending and comply with §21.311 of this title (relating to Criteria for Subsequent Scholarships).

§21.318. Noncompliance With the Scholarship Conditions. If the board determines that the scholar is not complying with the scholarship conditions in §21.317 of this title (relating to Scholarship Conditions) then the board will treat the scholarship as a loan as stated in the signed promissory note.

§21.319. Period of Loan. The principal amounts of loans shall be repaid in installments over a period of not more than ten years. (See §21.321 of this title (relating to Repayment of Loans).)

§21.320. Loan Interest.

(a) Capitalized Interest. Interest accrues from the date of each initial scholarship payment if the board has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months have elapsed after cessation of the scholar's full-time enrollment in such a course of study, or the day after that portion of the scholarship period for which the teaching obligation has been fulfilled. From the time capitalized interest begins to accrue to the time the repayment period begins (as described in §21.321 of this title (relating to Repayment of Loans)), the interest charge is adjusted annually and is set by the United States Secretary of Education by regulation at the rate that in no event is higher than the rate applicable to loans under Part B of Title IV, HEA, during the same twelve month period. The board shall capitalize any accrued unpaid interest the time it establishes the scholar's repayment schedule.

(b) **Interest Rate.** The interest rate is adjusted annually and is set by the United States Secretary of Education by regulation at the rate that in no event is higher than the rate applicable to loans under Part B of Title IV, HEA, during the same twelve month period.

(c) **Interest Rate Applicable During the Repayment Period.** The interest rate applicable during the repayment period is the interest rate prescribed by the United States Secretary of Education by regulation at the rate that in no event is higher than the rate applicable to loans under Part B of Title IV, HEA, that is in effect as of the beginning date of the repayment period.

§21.321. Repayment of Loans. A scholar shall begin repayment on the first day of the first calendar month after:

(1) the board determines that the scholar has ceased to pursue a course of study leading to certification as a teacher at the pre-school, elementary, or secondary level, but not before six months have elapsed after the cessation of the scholar's full-time enrollment in such a course of study;

(2) the date the scholar informs the board that he or she does not plan to fulfill the teaching obligation;

(3) the latest date, as determined by the board, on which the scholar must begin teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded.

§21.322. Minimum Repayment Amounts.

(a) Although loans may be prepaid at any time without penalty, except for capitalized interest, repayment shall begin as provided in §21.321 of this title (relating to Repayment of Loans) and shall extend over such period authorized in §21.319 of this title (relating to Period of Loan).

(b) The board will provide a repayment schedule calling for the minimum payment amount sufficient to repay all loans made under this subchapter over the maximum authorized period. Annual repayments will amount to no less than \$1,200 or the unpaid balance, whichever is less unless the scholar's inability to pay this amount because of his or her financial condition has been established to the satisfaction of the board. The board shall not require repayments amounting to more than \$1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period referred to in §21.319 of this title (relating to Period of Loan).

§21.323. Deferments.

(a) To qualify for any deferments, the scholar must notify the board of his or her claim to a deferment and submit written proof acceptable to the board that he or she is:

(1) engaged in a full-time course of study at an institution of higher education;

(2) serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) temporarily totally disabled, for a period not to exceed three years, as established by a sworn affidavit of a qualified physician;

(4) unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled;

(5) seeking and unable to find full-time employment for a single period not to exceed twelve months;

(6) seeking and unable to find full-time employment as a teacher in a public or private non-profit pre-school, elementary, or secondary school and unable to satisfy the terms of the repayment schedule. This deferment is limited to a single period not to exceed 27 months.

(b) The board shall extend the ten year loan repayment period by a period equal to the length of any deferment granted by the board. If the scholar proves his or her financial hardship to the board's satisfaction then the board may extend the ten year loan repayment period for a period as determined by the board.

(c) During the time a scholar qualifies for any of the deferments in subsection (a) of this section, he or she need not make scholarship payments.

§21.324. Enforcement of Collection.

(a) When a scholar who has received a loan authorized by this law shall have failed or refused to make as many as six monthly payments due in accordance with a promissory note(s), then the full amount of remaining principal, interest, and/or late charges shall immediately become due and payable. The scholar's name and last known address and other information as requested by the commissioner shall be reported to the attorney general. Suit for the remaining sum shall be instituted by the attorney general or any county or district attorney acting for him in the county of the scholar's residence or in Travis County, unless the attorney general shall find reasonable justification for delaying suit and shall so advise the commissioner in writing.

(b) Upon notification by the com-

missioner of default on this loan, the educational institution shall cause the records, including transcripts of the scholar, to become unavailable to him or her or any other person outside the institution until the participating institution has been notified by the commissioner that such default has been corrected. Should the default continue beyond at least 60 days from the date suit service was obtained, the commissioner will cause a judgment to be entered which may be filed in the county records where the service was obtained and will release such judgment once the scholar has completed the repayment of the debt as stipulated in the judgment.

(c) In all cases of default, the scholar will be responsible for the payment of principal and all accrued charges, including interest, late charges, skiptracing fees, court costs, and attorney fees.

§21.325. Provisions for Disability and Death. The board shall cancel a scholar's repayment obligations if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the scholar is unable to teach on a full-time basis because of an impairment that is expected to continue indefinitely or result in death; or

(2) on the basis of a death certificate, or other evidence of death that is conclusive under state law, that the scholar has died.

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 September 1, 1993.

TRD-9328336

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-6160

◆ ◆ ◆
**Subchapter AA. Texas-Mexico
Reciprocal Educational Ex-
change Program**

• 19 TAC §§21.901-21.906, 21.909

The Texas Higher Education Coordinating Board proposes amendments to §§21.901-21.906 and 21.909, concerning Texas-Mexico Reciprocal Educational Exchange Program. The amendments are being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. The existing exchange program for students/faculty/staff from Mexico and their counterparts at

Texas public institutions will be expanded to include students, faculty, and staff from Canada.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Adams also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that students from Texas will be encouraged to enrich their learning experiences by studying in Canada; students in Texas will be exposed to more students from Canada, thus expanding their opportunities to learn from them. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under the Texas Education Code, §54.060, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Reciprocal Educational Exchange Program.

§21.901. Purpose. The purpose of the reciprocal educational exchange program is to encourage students, faculty, and staff of participating institutions to better understand the culture, language, needs, and expectations of the United Mexican States, Canada, and the State of Texas.

§21.902. Delegation of Powers and Duties. The Texas Education Code, §54.060(c) provides that the Coordinating Board shall establish a program with the United Mexican States and Canada for the exchange of students, faculty, and staff between institutions of higher education.

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

Citizen of Canada—A citizen or permanent resident of Canada who resides in Canada and who plans to return to Canada to live immediately after finishing his/her educational program.

§21.904. Eligible Institutions. An institution eligible to participate in the exchange program must:

(1) be a public or private degree-granting institution of higher education located in Canada or the United Mexican States whose programs have recognition of official validity; or

(2)-(3) (No change.)

§21.905. Eligible Participants. A person is eligible to participate in the exchange program if he/she:

(1) (No change.)

(2) is a citizen of Mexico or Canada or an individual enrolled in a public institution of higher education in Texas;

(3)-(5) (No change.)

§21.906. Tuition Rate to be Paid.

(a) If the reciprocal exchange program involved requires a tuition payment, participating [Mexican] students, faculty or staff from Mexico or Canada will be eligible to enroll at the receiving Texas institution by paying a tuition rate equal to the resident rate of the receiving institution paid to the receiving institution; an amount equal to the resident rate at the originating institution, paid to the receiving institution; or an amount equal to the resident rate at the originating institution, paid at the originating institution. Texas students, faculty, or staff participating in the exchange program must be allowed to pay a tuition rate no greater than the tuition rate normally charged [Mexican] nationals of Canada or Mexico at the receiving [Mexican] institution in Canada or Mexico, paid to that receiving institution; the tuition rate normally charged residents in Texas, paid to the receiving institution; or the tuition rate normally charged Texas residents, paid to the originating institution. The decision as to the method of charging and collecting tuition is to be negotiated between the two institutions involved in the exchange.

(b) (No change.)

§21.909. Reporting Requirements. By October 31 of each year, each participating Texas institution shall provide a program report to the Board on a form provided by the Board. The report will include such things as the number of students, faculty, or staff who have participated in the exchange program, the names of the institutions in Canada or Mexico with which the exchanges have taken place, the programs of study, and any tuition or special classification 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.

Issued in Austin, Texas, on September 1, 1993.

TRD-9328341

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-6160

TITLE 22. EXAMINING BOARDS

Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 151. Practice and Procedure

- 22 TAC §§151.1, 151.6, 151.11, 151.12, 151.15, 151.17, 151.18, 151.19, 151.22, 151.27, 151.28

(Editor's Note: The Texas Appraiser Licensing and Certification Board proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections is in the Emergency Rules section of this issue.)

The Texas Appraiser Licensing and Certification Board (the board) proposes amendments to §§151.1, 151.6, 151.11, 151.12, 151.15, 151.17, 151.18, 151.19, 151.22, 151.27, and 151.28, concerning practice and procedure for the licensing and certification of real estate appraisers.

The amendments are proposed to conform the rules to the Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 6573a.2) as amended by House Bill 2644, 73rd Legislature, Regular Session, 1993, to conform with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 United States Code, §3331, et seq), to conform to other state laws, and to make technical and consistency corrections. These amendments are being adopted concurrently on an emergency basis.

Renil C. Liner, commissioner, has determined that for the first five years there will be no additional cost to state government beyond current appropriations as a result of enforcing and administering the proposed sections. Anticipated fees will be sufficient to cover the cost. No fiscal implications are involved for local government.

Mr. Liner also has determined that for each year of the first five-year period the sections are in effect the public benefit anticipated is that the amendments will help provide for a simple and efficient system of procedure before the board; to insure uniform standards of practice and procedure, public participation and notice of board actions; and a fair and expeditious determination of causes. There will be no effect on small businesses. There will be no local employment impact. There is no anticipated additional economic cost to persons who are required to comply with the proposed amendments.

Comments may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 6573a.2) which provide the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

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 September 7, 1993.

TRD-9328429 Renil C. Liner
Commissioner
Texas Appraiser Licensing
and Certification Board

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 465-3950

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

- 22 TAC §§153.1, 153.3, 153.5, 153.7, 153.9, 153.11, 153.13, 153.15, 153.17, 153.19, 153.20, 153.21, 153.25, 153.27, 153.29, 153.31, 153.33, 153.35, 153.37

(Editor's Note: The Texas Appraiser Licensing and Certification Board proposes for permanent adoption the new and amended sections it adopts on an emergency basis in this issue. The text of the new and amended sections is in the Emergency Rules section of this issue.)

The Texas Appraiser Licensing and Certification Board proposes amendments to 22 TAC §§153.1, 153.3, 153.5, 153.7, 153.9, 153.11, 153.13, 153.15, 153.17, 153.19, 153.20, and 153.21, and new §§153.25, 153.27, 153.29, 153.31, 153.33, 153.35, and 153.37, concerning the licensing and certification of real estate appraisers.

The amendments and additions are proposed to conform the rules to the Texas Appraiser Licensing and Certification Act as amended by House Bill-2644, 73rd Legislature, Regular Session, 1993, to conform with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. Section 3331, et seq), to conform to other state laws, and to make technical and consistency corrections. These amendments and additions are being simultaneously adopted on an emergency basis.

The amendments and additions help permit real estate appraisers to become licensed or certified in Texas and thereby eligible to appraise real property for federally-related transactions in compliance with the federal Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

New §153.25 relates to temporary certification and licensing, pursuant to the Texas Appraiser Licensing and Certification Act (the amended Act), Article 6573a(2), Vernon's Texas Civil Statutes, §15(a)-(c) and (e) as amended by House Bill-2644, 73rd Legislature, 1993. New §153.27 relates to certification and licensure by reciprocity pursuant to the amended Act, §15(d)-(j). New §153.29 relates to irrevocable consent to service of process pursuant to the amended Act, §15(e). New §153.31 relates to office location pursuant to the amended Act, §16. New §153.33 relates to signature or endorsement of appraisals pursuant to the amended Act, §19. New §153.35 relates to record keeping pursuant to the amended Act, §20. New §153.37 relates to offenses pursuant to the amended Act, §21.

Renil C. Liner, commissioner, has determined that for the first five years there will be an additional cost to state government as a result of enforcing and administering the proposed sections, estimated to be approximately \$6,500 annually for staff salaries and travel and operating expenses for the board. Anticipated fees will be sufficient to cover the cost.

Mr. Liner also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that improvements in the licensing and certification of real estate appraisers in Texas will better serve the public and that real estate appraisers will be able to appraise property for federally funded transactions. No fiscal implications are involved for local government. There will be no effect on small businesses as a result of enforcing the sections. There will be no local employment impact.

The anticipated additional cost to persons who are required to comply with the proposed amendments and additions are minimal, but include a five-dollar increase for the examination fee, additional fees for providing a licensure history of ten dollars, and a fee for a adding or terminating sponsorship of an appraiser trainee of twenty dollars. A decrease in time necessary to complete the form to establish required experience for certification or licensure will result in cost savings to applicants.

Comments may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 6573a(2)) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

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 September 3, 1993.

TRD-9328431 Renil C. Liner
Commissioner
Texas Appraiser Licensing
and Certification Board

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 465-3950

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Suspension or Revocation of Licensure

• 22 TAC §535.165

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

The Texas Real Estate Commission proposes the repeal of §535.165, concerning disclosure of buyer or tenant agency. The section requires a written disclosure form to be provided to a prospective seller or landlord by a real estate license representing a prospective buyer or tenant. The repeal is proposed in connection with the commission's recent amendment to §535.164 adopting a revised disclosure form containing information about real estate services and agency relationships.

Mark A. Moseley, general counsel, 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. Moseley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be increased consumer awareness of available real estate services and agency relationships. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.165. Disclosure of Buyer or Tenant Agency.

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 September 3, 1993.

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 465-3900

Title 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

• 34 TAC §7.307

The Comptroller of Public Accounts proposes new §7.307, concerning "Pick 3" on-line game rules. The purpose of the new section is to provide specific game details and requirements for the Texas Lottery's on-line game "Pick 3," such as type of play, prizes, method of selecting winning numbers, drawings, and the allocation of revenues. 34 TAC §§7.304 and §7.305 have been amended to include the addition of "Pick 3."

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is 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 allowing the comptroller to implement the operation of a daily on-line game, "Pick 3," in accordance with the State Lottery Act. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the new section may be submitted to Nora Linares, Director, Lottery Division, 111 East 17th Street, Austin, Texas 78701.

This new section is proposed under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery Act.

§7.307. "Pick 3" On-Line Game Rule.

(a) Pick 3. A Texas Lottery on-line game to be known as "Pick 3" is authorized to be conducted by the director under the following rules and under such further instructions and directives as the director may issue in furtherance thereof. If a conflict arises between this section and §7.304 of this title (relating to On-Line Game Rules (General)), this section shall have precedence.

(b) Definitions. In addition to the definitions provided in §7.304 of this title (relating to On-Line Game Rules (General)), and unless the context in this section otherwise requires, the following definitions apply.

(1) Advance Play—A player may purchase a Pick 3 ticket for any of the five Pick 3 drawings immediately following the current drawing. Example: On Monday, before the drawing, a Pick 3 ticket can be purchased for the Tuesday, Wednesday, Thursday, Friday, or Saturday drawings.

(2) Multi Draw—A player may purchase a Pick 3 ticket for 12 consecutive draws beginning with the current draw.

(3) Number—Any play integer from 0 through nine inclusive.

(4) Play—The three numbers selected on each play board and printed on the ticket.

(5) Play board—An area of a playslip which is marked by the player to select the type of play, the numbers to play, and the amount of the play.

(6) Playslip—An optically readable card issued by the Texas Lottery used by players of Pick 3 to select plays. There shall be five play boards on each playslip identified as A, B, C, D, and E. A playslip has no pecuniary value and shall not constitute evidence of ticket purchase or of numbers selected.

(c) Price of ticket. The price of each Pick 3 play shall be a minimum of \$.50. A player may play \$.50, \$1.00, \$2.00, \$3.00, \$4.00, or \$5.00 on each play. A player may purchase up to five plays on one ticket.

(d) Play for Pick 3.

(1) Type of play. A Pick 3 player must select three numbers, each from 0 through nine, for each play. The Texas Lottery reserves the right, at the discretion of the director, to allow or discontinue any of the following play types.

(A) Exact Order. A three-digit number selected by the player which shall match the three-digit number drawn by the Texas Lottery in the exact order.

(B) Any Order 3-way. A three-digit number selected by the player with two numbers the same, such as 122, which shall match the three-digit number drawn by the Texas Lottery in any order.

(C) Any Order 6-way. A three-digit number selected by the player with all three numbers different, such as 789, which shall match the three-digit num-

ber drawn by the Texas Lottery in any order.

(D) Exact/Any Order 3-way. A three-digit number selected by the player with two numbers the same, such as 377, which shall match the three-digit number drawn by the Texas Lottery in the exact order or in any order.

(E) Exact/Any Order 6-way. A three-digit number selected by the player with all three numbers different, such as 159, which shall match the three-digit number drawn by the Texas Lottery in the exact order or in any order.

(F) Combo 3-way. A three-digit number selected by the player with two numbers the same, such as 466, which shall match the three-digit number drawn by the Texas Lottery in any of the three possible exact order combinations.

(G) Combo 6-way. A three-digit number selected by the player with all three numbers different, such as 872, which shall match the three-digit number drawn by the Texas Lottery in any of the six possible exact order combinations.

(2) Method of play. The player will use playslips to make number selections. The on-line terminal will read the playslip and issue ticket(s) with corresponding plays. If a playslip is not available, the on-line retailer may enter the selected numbers, play type, and play amount via the keyboard. However, the retailer shall not accept telephone or mail-in requests to manually enter selected numbers through the keyboard. A player may leave all number selections to a random number generator operated by the computer, referred to as "Quick Pick."

(3) One prize per play. The holder of a winning ticket may win only one prize per play in connection with the winning numbers drawn.

(e) Prizes for Pick 3.

(1) Prize amounts. The prize amounts, for each drawing, paid to each Pick 3 player who selects a matching combination of numbers will be guaranteed amounts. Prize amounts are set forth in subsection (f) of this section.

(2) At the discretion of the director, a prize amount may be altered temporarily for marketing or promotional purposes.

(3) Prize pool. The prize pool for Pick 3 prizes shall be 50% of Pick 3 sales. The prize pool percentage may vary since all prize amounts are guaranteed.

(4) Prize reserve fund.

(A) The prize reserve fund may be increased or decreased by amounts paid to winners or prizes not claimed within the 180-day claim period.

(B) In the event any player who has a valid winning ticket does not claim the prize within 180 days after the

drawing in which the prize was won, the prize amount shall be added to the prize reserve fund and all rights to the prize shall terminate.

(C) The prize reserve fund may be decreased by any amounts paid to winners, due to the guaranteed prize amounts. For example, money may be allocated from the prize reserve fund to the Pick 3 prize pool if the prize liability is

greater than the 50% prize pool.

(f) Odds of winning. The following table sets forth the odds of winning in each prize category, based upon the total number of possible combinations of three numbers played in a field of 1,000 combinations. The prize amount for a \$.50 play in any of the listed prize categories is half as much as the prize amount for a \$1.00 play.

Prize Category	Odds	Ticket Cost	Prize Amount
Exact Order	1:1000	\$1.00	\$500
Any Order 3-Way	1:333	\$1.00	\$160
Any Order 6-Way	1:167	\$1.00	\$80
Exact/Any Order 3-Way	1:333	\$1.00	\$330 for Exact & Any Order \$80 for Any Order only
Exact/Any Order 6-Way	1:167	\$1.00	\$290 for Exact & Any Order \$40 for Any Order only
Combo 3-Way	1:333	\$3.00	\$500
Combo 6-Way	1:167	\$6.00	\$500

(g) Ticket purchases.

(1) Pick 3 tickets may be purchased only at a licensed location from a lottery retailer authorized by the lottery director to sell on-line tickets.

(2) Pick 3 tickets shall show the player's selection of numbers, play type, play amount, play boards played, drawing date(s), and validation and reference numbers.

(3) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s), amount, draw date(s) and other data printed on the ticket. A ticket is a bearer instrument until signed.

(4) Except as provided in subsection (d)(2) of this section, Pick 3 tickets must be purchased using official Pick 3 playslips. Playslips which have been mechanically completed are not valid. Pick 3 tickets must be printed on official Texas Lottery paper stock and purchased at a licensed location through an authorized

Texas Lottery retailer's on-line terminal.

(h) Cancellations.

(1) A Pick 3 ticket may be canceled by the selling retailer only if the following occur:

(A) the retailer has the actual Pick 3 ticket in their possession;

(B) the Pick 3 ticket is canceled at the selling retailer;

(C) the ticket is canceled no later than 60 minutes since the ticket was issued/purchased;

(D) the ticket is canceled before the draw break on the day the ticket was issued/purchased;

(E) no drawing applicable to the ticket has previously been held.

(2) The canceled receipt that is produced by the terminal when a ticket is canceled shall be kept with the original Pick

3 ticket that was canceled and retained by the retailer for at least 30 days.

(i) Drawings.

(1) The Pick 3 drawings shall be held each week on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday evenings at 9:59 p.m. Central Time except that the drawing schedule may be changed by the director, if necessary.

(2) Pick 3 tickets will not be sold from 9:45 p.m. Central Time until 10:01 p.m. Central Time on drawing days.

(3) The drawings will be conducted by lottery officials.

(4) Each drawing shall determine, at random, three winning numbers in accordance with Pick 3 drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the drawing procedures. The winning numbers shall be used in determining all Pick 3 winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one lottery security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(6) A drawing will not be invalidated based on the financial liability of the lottery.

(j) Announcement of incentive or bonus program. The lottery director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award(s).

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

Issued in Austin, Texas on September 8, 1993.

TRD-9328482

Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public
Accounts

Earliest possible date of adoption: October 15, 1993

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

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

**Part III. Texas Youth
Commission**

**Chapter 81. Administrative
Provisions**

General

• **37 TAC §81.4**

The Texas Youth Commission (TYC) proposes new §81.4, concerning prevailing wage rates for construction projects. The new rule will ensure that TYC construction projects comply with Texas Civil Statutes, Article 5159a, Construction of Public Works in State and Municipal or Political Subdivisions; Prevailing Wage Rate to be maintained.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that wage rates paid to each worker on the project by any contractor on the project will be no less

than the prevailing wage rate in the locality of the project. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.048, which provides the Texas Youth Commission with the authority to employ professional, technical, and clerical personnel to carry out the design and construction functions when constructing or improving buildings.

§81.4. Prevailing Wage Rate for Construction Projects.

(a) Policy. The Texas Youth Commission (TYC) ensures its construction projects comply with Texas Civil Statutes, Article 5159a, Construction of Public Works in State and Municipal or Political Subdivisions; Prevailing Wage Rate to be maintained.

(b) Rules.

(1) Prevailing Wage Rate.

(A) The specifications and the contract for each construction or renovation project administered by the Texas Youth Commission (TYC) shall include a schedule of wages to be paid on the project.

(B) The wage scale will reflect wages ascertained by TYC plant operations and development department as prevailing in the locality of the project for each craft or type of worker required thereon and not less than this rate shall be paid by any contractor on the project. "Wages" means the basic hourly rate of pay.

(C) The determination made by TYC plant operations and development department shall be final and will not be changed except as hereinafter provided.

(D) Prevailing wage rate determinations made by TYC shall be maintained in a record file for use by TYC for a period of 12 months in establishing wage rate schedules for all projects administered by TYC in the locality where the determination is made.

(2) Methods of Determining Prevailing Wage Rate.

(A) TYC shall determine prevailing wage rates for establishing its project wage scales in the following manner:

(i) United States Department of Labor rates. In those instances, and only in those instances, where federal funds are contingent upon use of a wage rate determined by the U.S. Department of Labor, the wage rates as determined by the U.S. Department of Labor shall be adopted by TYC's plant operations and development department as the prevailing wage rates for TYC's project wage scale. This is so even though said wage rate may include such fringe benefits as retirement, insurance, vacation, etc.

(ii) Survey of State Agency Published Wage Schedules. In those instances in which clause (i) of this subparagraph does not apply, the preferred method shall be for TYC to survey published wage schedules of other state agencies in order to determine which, in the opinion of the TYC plant operations and development department, is most appropriate for adoption and to adopt it. Adopted wage schedules shall reflect basic hourly rates only and shall not include such fringe benefits as retirement, insurance, vacation, etc.

(iii) Survey of Contractors. In those instances where published wage schedules of other state agencies are unavailable or inappropriate, TYC shall conduct its own survey of contractors, subcontractors, and any other interested parties in the county or locality in which the work is to be performed to determine the relevant wage rates. If information is presented to TYC indicating a survey in a particular county is not sufficiently representative due to a lack of construction projects of comparable size in that county, or in the judgment of TYC, survey data is in some other way insufficient, TYC may extend the area of a survey to contiguous counties. Procedures to be used are set out in paragraph (3) of this subsection. The TYC conducted survey is to be done as a last resort. TYC conducted surveys shall reflect basic hourly rates only and shall not include such fringe benefits as retirement.

(B) Once a prevailing wage rate schedule has been determined and published, it will not be changed unless it is necessary to add an omitted wage rate.

(3) Procedure for Surveying Contractors.

(A) Contractor survey procedure to be used under subsection (b)(2)(A)(iii) of this section:

(i) TYC will prepare master lists of contractors doing business in the locality.

(ii) The lists shall be compiled from the yellow pages of the tele-

phone book in the locality, and by contacting all contractor associations and labor organizations which maintain an office in the locality being surveyed; or such other source that will provide the most complete list of all contractors in the locality. If no office is maintained by a contractor association or labor organization in the locality, TYC may contact statewide organizations for names of additional contractors in the locality.

(iii) Lists shall be as complete as possible but may exclude those contractors whose contribution to the local work force is negligible.

(iv) Master lists will be broken down into the following categories:

(I) general and building contractors;

(II) site work (paving, grading, excavation) contractors;

(III) utility (water, gas, sewer collection and distribution) contractors;

(IV) plumbing (building systems) contractors;

(V) mechanical (HVAC) contractors;

(VI) electrical contractors,

(VII) roofing contractors;

(VIII) painting contractors; and

(IX) others as may be applicable to a specific project or locality.

(v) Contractors within the listed categories will not be classified as to size of their operation. Whether a contractor confines his operation to projects of a particular type or size will be considered when it is apparent that such specialization is common in the locality and is reflected in the wages prevailing therein.

(vi) Each contractor on each master list will be assigned an individual number to be used for the random selection of a sample from each list to be surveyed.

(vii) Sampling shall be in accordance with the following numerical formula:

(I) If list contains 25 or less names, sample 100%;

(II) If list contains 26 to 50 names, sample 80% but not less than 25;

(III) If list contains 51 to 100 names, sample 70 but not less than 40;

(IV) If list contains 101 to 150 names, sample 60% but not less than 70;

(V) If list contains 151 to 200 names, sample 50% but not less than 90;

(VI) If list contains 201 to 300 names, sample 40% but not less than 100; and

(VII) If list contains 301 or more names, sample 30% but not less than 120.

(viii) TYC will attempt to contact each contractor selected for sampling to obtain data on the wages being paid and an estimate of the contractor's work force. Contact will be by mail or personal interview using a standard questionnaire devised by TYC for reporting information.

(ix) Surveys will be conducted not less than once each 12 months in the locality where construction projects are administered on a continuing frequency. In areas where projects are infrequent a survey will be made for each project unless there was a survey conducted within the previous 12-month period.

(x) If questionnaires are mailed, TYC will allow 30 days for contractors to respond. All data received up to that time will be compiled and a prevailing wage rate ascertained.

(xi) Data from the wage rate questionnaires shall be compiled and analyzed to determine the prevailing wage rate being paid for the various classifications of labor. Criteria used to determine the prevailing rate shall include:

(I) When 50% or more of workers within a given classification are all reported to have received the exact same base rate of pay, that rate will be considered as prevailing.

(II) When more than 50% of workers within a given classification are reported to have received hourly pay rates within \$1 of each other the lower

of this range of rates will be considered as prevailing.

(III) When a rate cannot be determined by either of the above, the weighted average of all reported wages within a given classification will be considered as prevailing. "Weighted average" means, as the wage rate for a given classification produced by multiplying each rate reported by the number of employees receiving that rate, and dividing the cumulative products by the total number of employees reported for the classification.

(IV) Both the rate of pay reported and the number of workers receiving that rate will be used in establishing the prevailing wages.

(V) In case of conflict between any of the above, or in case of inability to obtain adequate survey data on which to act, determination of the prevailing wage rate will be based upon the best judgment of the analyst after giving consideration to any and all additional data at his disposal.

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 September 7, 1993.

TRD-9328475

Ron Jackson
Executive Director
Texas Youth Commission

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For further information, please call: (512) 483-5244

Chapter 83. Contracted Youth Services

• 37 TAC §§83.7, 83.9, 83.12, 83.41

The Texas Youth Commission (TYC) proposes amendments to §§83.7, 83.9, 83.12, and 83.41, concerning contracting for residential and nonresidential services, rate setting, start-up funds, and admission and referral to contract programs. The amendments will incorporate references to the Texas Health and Human Services Commission and delete references to the Texas Health and Human Services Coordinating Council in TYC rules. References to changes in rate have been expanded to include changes in guarantee or level of care.

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

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient contracting process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.037, which provides the Texas Youth Commission with the authority to enter into agreements with appropriate public or private agencies.

§83.7. Contracting for Residential and Non-residential Services.

(a) Policy. The Texas Youth Commission (TYC) contracts with private service agencies for nonresidential and residential services appropriate for TYC youth.

(b) Rules.

(1) General.

(A) TYC enters into contracts with private agencies best able to provide services to meet specific needs of TYC youth identified through a process of needs assessments and Requests for Proposal.

(B) TYC contracts with providers which meet:

(i) TYC's Basic Core Standards, licensing standards of the Department of Human Services, accreditation requirements of the Joint Committee on Accreditation of Health Care Organization and/or the Council on Accreditation, Texas Department of Mental Health and Mental Retardation Community Standards, Texas Commission on Drug and Alcohol Licensing Standards or Texas Health Department Standards; and

(ii) Texas Health and Human Services Commission [Coordinating Council] Levels of Care; and/or

(iii) special requirements set forth by a Request for Proposal or a proposal for services.

(C) Contracts may be for a term up to two years.

(D) Contract compliance is ensured through a quality assurance program of monitoring by TYC contract specialists.

(E) Approval of the chief of community placement is required to execute all referenced contracts.

(F) Neither shall youth be placed into any residential program, except on an emergency basis and approved by the regional director, nor any funds encumbered prior to the full execution of the contract.

(2) New Contract Procedure for Existing Programs.

(A) Contract specialist investigates and evaluates a program for a contract based on service needs.

(B) If a program meets the needs, qualifies as a service provider, and the region recommends a contract, then the contract specialist forwards appropriate paperwork to chief of community placement.

(C) The chief of community placement reviews and submits to legal department to initiate a contract.

(D) Chief of community placement forwards the contract to the contract specialist.

(E) The contract specialist reviews the contract and obtains signature of the service provider.

(F) The contract specialist forwards the signed contract to the chief of community placement for signature.

(G) The chief of community placement routes copies to the following:

(i) Finance—original;

(ii) Contract program;

(iii) Contract specialist; and

(iv) Chief of community placement.

(H) The contract specialist ensures all appropriate personnel in the region have copy(ies) of the contract.

(3) Contract Renewal Procedure.

(A) Contract specialist begins the contracting process three months prior to renewal.

(B) Contract specialist completes evaluation and submits the evaluation

to the chief of community placement with a recommendation to renew/not renew two months prior to expiration of contract.

(C) Chief of community placement reviews the recommendation and submits to legal department to initiate a new contract if there are [is] no recommended changes [rate increase].

(D) If a change in rate, guarantee, or level of care [rate increase] is recommended, the chief of community placement submits to the contract care review committee to review and to make a recommendation to grant or deny the regional recommendation. The chief of community placement submits to the deputy executive director for final approval of all rate increases.

(i) If rate increase is denied, the chief of community placement informs the contract specialist and the service provider is informed of the results by the contract specialist and is advised of the appeal process.

(ii) If rate increase is approved, the chief of community placement submits paperwork to legal department to initiate a new contract.

(E) Chief of community placement forwards the contract to the contract specialist.

(F) The contract specialist reviews the contract for corrections and obtains signatures.

(G) The contract specialist forwards the signed contract to the chief of community placement for signature.

(H) The chief of community placement routes copies to the following:

(i) Finance—original;

(ii) Contract program;

(iii) Contract specialist; and

(iv) Chief of community placement.

(I) The contract specialist ensures all appropriate personnel in the region have copy(ies) of the contract.

(4) New Contract Procedure for RFP Awarded Programs.

(A) Chief of community placement submits paperwork to legal department to initiate a new contract(s).

(B) Chief of community placement obtains all signatures and routes copies to the following:

- (i) Finance—original;
- (ii) Contract program;
- (iii) Contract specialist;
- (iv) Chief of community placement.

(C) The contract specialist ensures all appropriate personnel in the region have copy(ies) of the contract.

§83.9. Rate Setting.

(a) Policy. The Texas Youth Commission (TYC) sets rates for residential programs based on maximum rates indicated in the Appropriations Bill. The TYC board approves maximum rates to be paid for each level of care.

(b) Rules.

(1) Applicable Issue.

(A) Rates set for each level of care paid shall not exceed the maximum daily rate per youth recommended by the Health and Human Services Commission [Coordinating Council] for each level of care.

(B) TYC shall make reasonable efforts to ensure payment on a fixed monthly basis when it is cost-effective to the agency as determined by the chief of community placement.

(C) Except where payment is guaranteed, rates and payments are made on a per day per youth basis for all contract services for each contract cycle.

(D) Factors considered in rate setting:

- (i) uniform cost reports;
- (ii) cost of services;
- (iii) annual rate of inflation;
- (iv) analysis of contract budgets in terms of efficiency and cost of services;
- (v) occupancy rates; and
- (vi) state appropriations.

(2) Rate Increases.

(A) Rate increases may occur by two methods:

(i) across the board rate increase as approved by the TYC board; and

(ii) performance based.

(B) Performance-based increases may be awarded based on agency contract care evaluations which occur prior to contract renewal. Areas of required compliance are indicated in individual contracts.

(i) An individual contract must be, at a minimum, in substantial compliance in areas which may include levels of care, licensing or TYC Core standards, request for proposal, proposal for services, or any special requirements identified in an individual contract.

(ii) An individual contract must also meet 75% of agency identified performance standards as above average, unless extenuating circumstances exist.

(iii) Extenuating circumstances must be included and justified for consideration.

(iv) All of the above must be met to be eligible for a rate increase.

(C) The contract care evaluation process begins three months prior to the end of a contracting period.

(D) The contract care evaluation is completed by the contract specialist, approved by the regional director and submitted to the chief of community placement for recommended rate increases. The chief of community placement submits to the contract care review committee which consists of staff from the following departments:

- (i) Contract services;
- (ii) Research and planning; and
- (iii) Finance.

(E) The review committee reviews the evaluation and recommendations of a rate increase and may approve or deny the request. The chief of community placement submits the contract care review committee's recommendation to deputy executive director for final approval. The contract specialist is notified of the outcome by the chief of community placement. The contract specialist notifies the service provider.

(3) Appeal.

(A) Appeals may be made by the service provider to the director of community services in the form of a written

request outlining specific issues in dispute and suggested remedies within 15 days of the contract evaluation notification to the program.

(B) The director of community services will respond to appeals within 30 days of receipt of an appeal.

(C) The decision of the director of community services is final regarding disputes involving the contract program evaluation and rate increases.

§83.12. Start-up Funds.

(a) Policy. The Texas Youth Commission (TYC) awards start-up funds as an established method of developing additional private contract care programs to meet the demand for services for the youth in TYC care. All start-up funds paid to contract care agents over and above payments for services must be awarded through a competitive request for proposal process.

(b) Rules.

(1) Explanation of Terms Used.

(A) Start-up funds are funds which are authorized to be paid by TYC to assist in establishing programs owned and operated by private organizations which agree to provide services to delinquent youth committed to the agency.

(B) Request for proposal is a document used in a competitive bid process.

(C) Funding agreement is a contractual agreement which establishes the need for and conditions under which start-up funds will be awarded and expended.

(D) Advance payments are payments to contract agents prior to the completion of the monthly services rendered.

(E) Guaranteed payments are fixed monthly payments to contract agents based on a daily rate per bed and a predetermined number of youth, even though fewer youth may be in the programs.

(F) Contract for service is an agreement between service agent and TYC that establishes an enforceable legal relationship between the two parties.

(G) Letter of credit is a guarantee by a service agent's bank that payment will be made when the proper documents are tendered.

(H) Default is the failure to perform a legal obligation.

(2) Restrictions.

(A) Start-up funds may be awarded only when there is a critical need for services which cannot be met by existing programs.

(B) Start-up funds may be awarded only if TYC cannot identify service agents willing to start programs without financial assistance.

(C) Start-up funds may not exceed a reasonable value for a contractually guaranteed number of beds for the initial contract period. The start-up funds are awarded in consideration of the contract for services

(D) Start-up funds are paid monthly, based on the expenditures reflected in the agents monthly expenditure report and in accordance with the approved start-up budget.

(E) Payments for equipment and renovation items are initiated by submission of invoice or other documentation along with an expenditure report.

(F) No repayment of start-up funds is required except in the case of default.

(G) Each Request for Proposal (RFP) states a maximum amount of start-up funds and guaranteed payments which may be awarded based on type of program, specific location, and size of the program.

(H) The RFP requires that start-up funds are requested through a proposed budget with narrative justifications. The RFP restricts the request to those funds necessary to make the program operational. Funds will not be used for the purchase of real property, i.e. land, buildings, but may be awarded for building renovations which are critical to the program operation.

(I) Guaranteed fixed monthly payments may be awarded for a given number of beds to ensure the availability of services determined to be critical to the needs of the agency.

(3) Monitoring.

(A) The director of community services shall appoint TYC staff to act as monitors for any programs awarded start-up funds.

(B) TYC monitors the start-up progress in accordance with the terms of the start-up funding agreement, the contract for services and the bidder's final proposal as approved by the agency.

(C) TYC start-up monitoring commences from the date of the funding agreement to the date the program begins operation.

(D) The TYC staff responsible for start-up monitoring signs all purchase vouchers for start-up funds and ensures that appropriate goods and services are received.

(4) Security.

(A) Start-up funds are secured through a letter of credit and a lien on property and equipment, when applicable.

(B) The letter of credit should have a decreasing monthly balance based on the contracted months of service beginning with the first operational month.

(5) Default.

(A) In the event of default, the amount of start-up funds which should be repaid is based on the total start-up funds paid less the amount of start-up funds earned up to the date of default.

(B) Start-up funds are earned based on the number of months of service for the contracted number of beds actually rendered up to the point of default.

(6) Payment for Contracted Services.

(A) The contract for services does not provide for advance payments. Contract agents are expected to have a minimum of one month's operating capital available from other sources in order to secure the financial stability of the program. Additional funds necessary to operationalize a program should be requested in the start-up funding budget.

(B) Contracts for services shall not guarantee payment for more than 90% of the contracted average daily population (ADP).

(C) Contracts for services must not exceed the approved rate structure for the services required by the level of care system. Additional services beyond Health and Human Services Commission's [Coor-

dinating Council's] recommended levels of care requirements may be negotiated at a supplemental rate.

(D) The start-up funding agreement shall establish a maximum time frame allowable within which a program must become operational.

(E) The start-up funding agreement and the contract for services dates shall establish a service period after the program becomes operational.

§83.41. Admission and Referral to Contract Programs.

(a) Policy. The Texas Youth Commission (TYC) establishes a level of care for all residential contract programs based on standards of service that were previously adopted by the Texas Health and Human Services Commission [Coordinating Council]. TYC makes referrals consistent with the level of care needed by each youth and provided by each program.

(b) Rules.

(1) The TYC centralized placement unit makes referrals consistent with the service agent's level of care. Additional services may enhance the service agent's potential for serving youth with a higher level of care.

(2) The residential contract program responds to the centralized placement unit within five days of receipt of the referral with one of the following responses:

(A) the youth is appropriate for placement and the projected date of placement;

(B) the youth is appropriate for placement but requests a preplacement interview or visit;

(C) further information is needed to make a decision;

(D) placement is rejected and the rationale; or

(E) further negotiation is needed to establish level of care and/or additional services that will be required to meet the individual youth's needs.

(3) The decision to grant a preplacement interview or visit prior to placement is made by the designated TYC administrator. This decision is based on a TYC staff and contract program agreement that such a visit is necessary to determine appropriateness of the placement.

(4) On admission, the youth is oriented by the TYC primary service worker and program staff to the program's expectations and any special requirements of the program.

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

Issued in Austin, Texas, on September 7, 1993.

TRD-9328474 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-5244

Chapter 85. Admission and Placement

Commitment and Reception

• 37 TAC §85.1

The Texas Youth Commission (TYC) proposes an amendment to §85.1, concerning legal requirements for admission. The amendment removes the reference to a document that previously could be submitted in place of the current Common Application. The Common Application is required documentation by TYC.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient admission process of youth committed to TYC. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.065, which provides the Texas Youth Commission with the authority to request required reports for a youth committed to TYC be made on forms furnished by the commission or according to an outline furnished by the commission.

§85.1. Legal Requirements for Admission. Policy.

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

(3) No youth, under any circumstance, is admitted to TYC without a certi-

fied copy of the Order of Commitment, immunization records (except for undocumented aliens), and [either] the Common Application [or the TYC Commitment Summary]. All other documents may be received subsequent to admission.

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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Executive Director
Texas Youth Commission

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Placement Planning

• 37 TAC §85.21, §85.37

The Texas Youth Commission (TYC) proposes amendments to §85.21 and §85.37, concerning program assignment system and discharge of youth committed to TYC. The amendments will clarify that placement guidelines are used each time a youth is moved and not just on initial placement. Amendments to the discharge section clarify criteria for the discharge of youth who were ever classified as chronic serious offenders or controlled substance dealers, and youth classified as general offenders and firearms offenders.

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

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient system for placement of youth, length of stay determination for youth, and discharge of youth committed to TYC. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the youth's confinement under conditions it believes best designed for the youth's welfare and interests of the public, and to discharge the youth from control when it is satisfied that discharge will best serve the youth's welfare and the protection of the public.

§85.21. Program Assignment System.

(a) Policy. Texas Youth Commission (TYC) utilizes an objective, equitable system of program assignment for each youth in TYC care. Based on each youth's age, offense(s), and risk level, TYC has predetermined the most appropriate level of restriction and minimum length-of-stay requirements. Services provided by each program are matched with youth service needs to determine the most appropriate program placement. The assessment and placement process provides current information on individual youth needs. Male and female youth have equal access to agency programs and activities.

(b) Rules.

(1) Guiding Principles. TYC's development of the system of program assignments is based on the following:

(A) Program placements are in the least restrictive, most appropriate and available placement.

(B) Among program placement alternatives of which each provides the required services and level-of-restriction, the placement selected is the one closest to the youth's home.

(2) Placement System Factors. The program placement system incorporates the following factors.

(A) Classification is determined by the classifying offense and a finding regarding extenuating circumstances.

(B) The minimum length-of-stay is designated by the classification. (See §85.25 of this title, relating to Minimum Length of Stay.)

(C) Special consideration is given to the placement of youth under the age of 13.

(D) Risk is assessed and used as a guideline in designating placement.

(E) Placements are made according to restriction and needs.

(i) The level of restriction required of the placement selected is determined by classification, age and risk level. (See §85.27 of this title, relating to Program Restriction Levels.)

(ii) Initial placements are always to residential programs or day treatment programs providing services at least

eight hours per day, five days per week, except for youth classified as violators of CINS probation.

(iii) The youth's assessed service needs are used to select a placement within the required level of restriction.

(F) See paragraph (5) of this subsection for waivers and exceptions to the placement system factors.

(3) System Description. The determining factors and guiding principles result in the following [initial] placement and length-of-stay determinations for all TYC youth on initial commitment, for youth recommitted for the commission of a felony or high-risk offense, and for youth found at an administrative Level I hearing to have committed a felony or high-risk offense [new commitments].

(A) A sentenced offender is assigned a minimum length-of-stay equal to the court sentence or time until transfer, or recommitment, or discharge and, regardless of age, or risk level, is assigned to a TYC perimeter-secure facility.

(B) A Type-A violent offender is assigned a minimum length-of-stay of 24-48 months as set by executive director and if 13 years or older, with any risk level, is assigned to a program of maximum restriction.

(C) A Type-A violent offender is assigned a minimum length-of-stay of 24-48 months as set by executive director and if younger than 13 years, with any risk level, is assigned to a program of high restriction.

(D) A Type-B violent offender classified for conspiracy to commit murder, conspiracy to commit capital murder, solicitation of murder, or solicitation of capital murder, is assigned a minimum length-of-stay of 12 months and if 13 years or older, with any risk level, is assigned to a program of maximum or high restriction.

(E) A Type-B violent offender classified for conspiracy to commit murder, [or] conspiracy to commit capital murder, [or] solicitation of murder, or solicitation of capital murder, is assigned a minimum length-of-stay of 12 months and if younger than 13 years, with any risk level, is assigned to a program of high restriction.

(F) A Type-B violent offender is assigned a minimum length-of-stay of nine months, and if 13 years or older, with any risk level, is assigned to a program of maximum or high restriction.

(G) A Type-B violent offender is assigned a minimum length-of-stay of nine months and if younger than 13 years, with any risk level, is assigned to a program of medium restriction.

(H) A chronic serious offender is assigned a minimum length-of-stay of six months and if 13 years or older, with any risk level, is assigned to a program of high restriction.

(I) A chronic serious offender is assigned a minimum length-of-stay of six months and if younger than 13 years, with any risk level, is assigned to a program of medium restriction.

(J) A controlled substances dealer is assigned a minimum length-of-stay of six months and if 13 years or older, with any risk level, is assigned to a program of high restriction.

(K) A controlled substances dealer is assigned a minimum length-of-stay of six months and if younger than 13 years, with any risk level, is assigned to a program of medium restriction.

(L) A firearms offender is assigned a minimum length-of-stay of six months, and if 13 years or older, with any risk level, is assigned to a program of high restriction.

(M) A firearms offender is assigned a minimum length-of-stay of six months, and if younger than 13 years, with any risk level, is assigned to a program of medium restriction.

(N) A general offender is assigned a minimum length-of-stay of six months, and if 13 years or older, with a high risk level, is assigned to a program of high restriction.

(O) A general offender is assigned a minimum length-of-stay of six months, and if 13 years or older, with a low or medium risk level, is assigned to a program of medium restriction.

(P) A general offender is assigned a minimum length-of-stay of six months, and if younger than 13 years, with any risk level, is assigned to a program of medium restriction.

(Q) A violator of CINS probation is not assigned a minimum length-of-

stay, and regardless of age, with high or medium risk level, is assigned to a program of medium restriction.

(R) A violator of CINS probation is not assigned a minimum length-of-stay and regardless of age, with low risk level, is assigned to a program of minimum restriction.

(4) Responsibility. The specific program placement selection for each youth is the responsibility of the Statewide Reception Center for TYC training school placements and the centralized placement unit for all other placements including Evins Regional Juvenile Center. Specific selection is based on:

(A) programs available which can meet determined service needs and do so within the restrictions of placement assignment matrix;

(B) a program's proximity to the youth's home; and

(C) a recommendation by the previous program staff, if applicable.

(5) Waivers and Exceptions. Waivers and exceptions may be granted under special circumstances.

(A) A placement designation, except that of sentenced offender or Type-A violent offender, which is a disposition to a more restrictive placement following a disciplinary hearing or a placement designation following initial reception center evaluation, may be waived by the reception center superintendent when a youth is qualified. A designated placement may be waived in order to provide specialized treatment not available in the designated placement when it is determined a youth is physically handicapped, has a special medical condition, or is emotionally disturbed, if such condition would prevent the youth from functioning in the designated placement. The waiver is effective for the period of time necessary to stabilize the youth or to treat the condition as long as the condition inhibits the youth's ability to function in the designated placement.

(B) Any placement designation except those of sentenced offenders and Type-A violent offenders may be waived by the reception center superintendent when population is at or above established capacity.

(C) Any designated placement may be waived or the youth moved to any other placement of equal or less restric-

tion if requested by the institutional superintendent or regional director where the youth is located and granted by the executive director or designee.

(D) For waiver of classification, see §85.23 of this title (relating to Classification).

(E) For movement for population control see §85.29 of this title (relating to Program Completion and Movement).

(6) Parent Notification. Parents/guardians are notified of all placements.

§85.37. Discharge.

(a) Policy. All Texas Youth Commission youth are discharged by age 21. Youth may be recommended for early discharge when specific criteria have been met.

(b) Rules.

(1) Controlling Classification. Discharge criteria is applied according to classification or to special circumstance. Eligibility for discharge according to classification is controlled by the most serious offense for which the youth has ever been classified.

(2) Discharge Criteria.

(A) Classification.

(i) Youth ever classified as sentenced offenders are discharged when one of the following occurs:

(I) expiration of the sentence imposed by the juvenile court;

(II) the youth is transferred to the Texas Department of Criminal Justice pursuant to an order issued by the juvenile court at a transfer hearing; or

(III) age 21 is reached.

(ii) Youth ever classified as Type-A violent offenders are discharged when one of the following occurs:

(I) age 18 is reached and the youth is committed for offense(s) which occurred before September 1, 1985; or

(II) age 21 is reached and the youth is committed for offense(s) which occurred on or after September 1, 1985.

(iii) Youth ever classified as Type-B violent offenders are discharged when one of the following occurs:

(I) age 18 is reached and the youth is committed for offense(s) which occurred before September 1, 1985;

(II) age 21 is reached and the youth is committed for offense(s) which occurred on or after September 1, 1985; or

(III) completion of 12 consecutive months on parole status in the home or home substitute and the youth:

(-a-) has had no delinquency adjudications or criminal convictions during the period;

(-b-) has no pending delinquency petitions or criminal charges;

(-c-) is on minimum or medium supervision level; and

(-d-) has had a positive parole adjustment, as defined in this policy.

(iv) Youth ever classified as a chronic serious offender or a controlled substance dealer [assigned any other classification with a minimum length-of-stay] are discharged when one of the following occurs:

(I) age 18 is reached and the youth is committed for offense(s) which occurred before September 1, 1985;

(II) age 21 is reached and the youth is committed for offense(s) which occurred on or after September 1, 1985; or

(III) completion of six consecutive months on parole status in the home or home substitute and the youth:

(-a-) has had no delinquency adjudications or criminal convictions during the period;

(-b-) has no pending delinquency petitions or criminal charges;

(-c-) is on minimum or medium supervision level; and

(-d-) has had a positive parole adjustment as defined in this policy.

(v) General offenders, firearms offenders and youth never assigned [Youth never assigned a classification with] a minimum length-of-stay are

discharged when one of the following occurs:

(I) the youth is on parole status in the home or home substitute and:

(-a-) age 18 is reached; or

(-b-) before age 18 is reached if the youth has completed six consecutive months on parole status in the home or home substitute and the youth:

(-1-) has had no delinquency adjudications or criminal convictions during the period;

(-2-) has no pending delinquency petitions or criminal charges;

(-3-) is on minimum or medium supervision level; and

(-4-) has had a positive parole adjustment as defined in this policy; or

(II) the youth is in any program other than parole status in the home or home-substitute and:

(-a-) age 18 is reached and the youth is committed for offense(s) which occurred before September 1, 1985; or

(-b-) after age 18 is reached and by the day age 21 is reached if committed for offense(s) which occurred on or after September 1, 1985, as soon as he or she meets required program completion criteria. The youth is discharged and not placed on parole status in the home or home substitute.

(B) Special Circumstance.

(i) Youth of any classification are discharged under the following circumstances:

(I) court-ordered reversal of commitment;

(II) the youth being sentenced to prison;

(III) commitment to the Texas Department of Mental Health and Mental Retardation;

(IV) enlistment in the military;

(V) closing of records following a youth's death or recommitment;

(VI) discharge by the executive director or his designee for any other reason, such as an illness or injury which prevents return to active program participation; or

(VII) TYC youth placed out of state may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state in accordance with §85.43 of this title (relating to Interstate Compact for TYC Youth).

(ii) Youth of any classification except sentenced offenders are discharged under the following circumstances:

(I) placement on adult probation while on parole in a non-residential placement;

(II) immediately on release from any residential placement, if the youth was placed on adult probation while in residential placement; or

(III) placement on juvenile probation.

(3) Exception for Services.

(A) TYC custody of a youth who would otherwise be discharged at age 18 may be continued up to age 21 if the youth was committed for offense(s) which occurred on or after September 1, 1985, and extended supervision is requested in writing by the primary service worker, agreed to in writing by the youth, and would allow TYC to support special programs for the youth which would not be provided by other means.

(B) Extending custody requires approval of the regional director or institutional superintendent, as appropriate.

(C) Agreement to this discharge exception may be cancelled at any time by either the youth or the primary service worker.

(4) Positive Parole Adjustment. For purposes of discharge, positive parole adjustment shall be shown by documentation that a youth:

(A) has completed [is meeting] ICP objectives; and

(B) has, for 90 consecutive days, been:

(i) enrolled and participating in an appropriate educational or training program; or

(ii) satisfactorily employed.

(5) Approvals. Youth discharges are requested by the primary service worker and approved by the institutional superintendent or regional director as appropriate. A brief closing summary of the youth's [youth] adjustment while on parole supervision at home is included. Approvals ensure that discharge criteria have been met. Discharge of TYC youth placed out of state is requested by the deputy administrator of interstate compact and approved by the director of community services. Discharges for other special circumstances are approved by the executive director.

(6) Notification.

(A) As soon as the discharge date is determined, but not more than 30 days prior to the discharge date, the program to which the youth is assigned shall send a letter of discharge to the youth. The youth is informed of the procedure for sealing records, LS-301.

(B) Fifteen days prior to discharge the program to which the youth is assigned shall send Notification to Juvenile Court form, CCF-181 to the committing court and prosecuting attorney.

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 September 7, 1993.

TRD-9328477

Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-5244

Chapter 87. Treatment

Placement Planning

• 37 TAC §87.11

The Texas Youth Commission (TYC) proposes an amendment to §87.11, concerning substance abuse services. The amendment adds that TYC substance abuse programs will provide services consistent with federal and state mandates and guidelines.

John Franks, director of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that better substance abuse programs will be provided for TYC youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4280, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission shall adopt rules for programs under its authority that are conducted according to law.

§87.11. Substance Abuse Services.

(a) Policy. The Texas Youth Commission (TYC) provides for the clinical management of chemically dependent youth. TYC recognizes alcohol, inhalant or drug abuse as an illness as well as a major health problem. The agency considers such use to be related to criminal acts of chemically dependent youth. The condition of chemical dependency must be treated to reduce the possibility of further involvement in criminal behavior as well as for the care of the youth. During intake to TYC a physician documents signs and symptoms of chemical dependency and determines whether a referral for detoxification is indicated. In the institutions, a multidisciplinary team develops and implements an individualized treatment plan. Referrals are made to specified community resources when appropriate. TYC operated substance abuse programs provide services consistent with federal and state mandates and guidelines. Specific requirements can be found in the Substance Abuse Program Operating Manual. (This policy is applicable for services specially funded and staffed as a chemical dependency treatment program. It is not applicable to contracted services.

(b) Rules.

(1) At intake a physician completes a physical examination on each youth to determine needle marks, or other indications of alcohol/drug abuse including physical dependence and to determine the need for medically supervised detoxification.

(2) Every youth is administered the Substance Abuse Subtle Screening Inventory (SASSI) at time of admission to TYC.

(3) All youth screened as being chemically dependent on the SASSI or

those screened as abusers whose casefile contains indicators of extensive drug use undergo chemical dependency assessment, by a licensed chemical dependency counselor (LCDC).

(4) An objective for the initial Individual Case Plan (ICP) indicating a requirement for successful completion of pre-treatment education and placement in an appropriate treatment environment (residential, intensive outpatient, supportive outpatient) shall be prepared for all chemically dependent youth by the licensed chemical dependency counselor.

(5) Pretreatment and treatment services are provided in TYC-operated high-restriction facilities and in TYC-operated community-based treatment programs if related funds are available.

(6) All TYC personnel providing chemical dependency treatment services are licensed chemical dependency counselors (LCDC) or are TCADA-approved LCDC interns working under the supervision of an LCDC.

(7) Youth are referred upon recommendation by a licensed chemical dependency counselor to either treatment or continuing chemical dependency care services, as appropriate, upon placement in the community.

(8) TYC direct-care personnel receive training in signs and symptoms of chemical dependency.

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 September 7, 1993.

TRD-9328476 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-5244

Basic Care Services

• 37 TAC §87.71

The Texas Youth Commission (TYC) proposes an amendment to §87.71, concerning living environment. The amendment will allow youth to personalize their rooms to a limited extent and maintain a safe environment.

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

Mr. Franks also has determined that for each year of the first five years the section is in

effect the public benefit anticipated as a result of enforcing the section will be that TYC youth will be able to personalize their rooms safely. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to have general charge of and be responsible for the welfare, custody, and rehabilitation of the youth in a school, facility, or program operated or funded by the commission.

§87.71. Living Environment.

(a) Policy. Living areas in Texas Youth Commission (TYC) facilities provide for and enhance cleanliness, personal security, and to the extent possible, privacy of youth.

(b) Rules.

(1) Facilities are clean and orderly. Youth are required to participate in cleaning the living areas according to a written housekeeping plan. Youth are taught proper housekeeping practices.

(2) Living areas are made home-like and attractive through the use of pictures, posters, plants, and drapes/curtains. [Youth may personalize their rooms within reasonable guidelines].

(3) Youth may personalize their rooms within reasonable guidelines. Items on walls in bedrooms will be limited to space available on individual bulletin boards.

(4) No more than 20% of any wall in institutions may be covered with combustible material.

(5)[(3)] Facilities provide personal hygiene articles for each youth. When a youth has attained the appropriate privilege level and if he or she has personal money, he may be taken to a local store to purchase specific articles.

(6)[(4)] Barber and beautician services are provided.

(7)[(5)] Youth are taught personal hygiene skills.

(8)[(6)] Facilities provide and have readily available for each youth clean bedding and linens.

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 September 7, 1993.

TRD-9328478 Ron Jackson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 15, 1993
For further information, please call: (512) 483-5244

Chapter 91. Discipline and Control

Disciplinary Practices

• 37 TAC §91.9

The Texas Youth Commission (TYC) proposes an amendment to §91.9, concerning parole revocation consequence. The amendment clarifies the criteria required for a youth's parole to be revoked in a Level I hearing. Amendments allow revocation when major rule violations occur within any 30 day or 90 day period following transfer, not just the first 30 or 90 days following transfer.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more effective revocation system. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.9. Parole Revocation Consequences.

(a) (No change.)

(b) Rules.

(1) (No change.)

(2) Criteria and Classification.

(A) Parole is revoked when it is shown in a Level I hearing that a youth has:

(i) committed a high risk offense;

(ii) committed a felony;

(iii) committed any major rule violation and has previously been classified for a high-risk offense; or

(iv) [within the first 90 days] following the youth's disciplinary transfer [to] and prior to the completion of a medium restriction program:

[(I) committed a felony offense;]

(I)[(II)] committed a major rule violation causing substantial bodily injury;

(II) [(III)] committed two major rule violations within 30 days; or

(III)[(IV)] committed three major rule violations within 90 days.

(B)-(C) (No change.)

(3) (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 September 7, 1993.

TRD-9328479

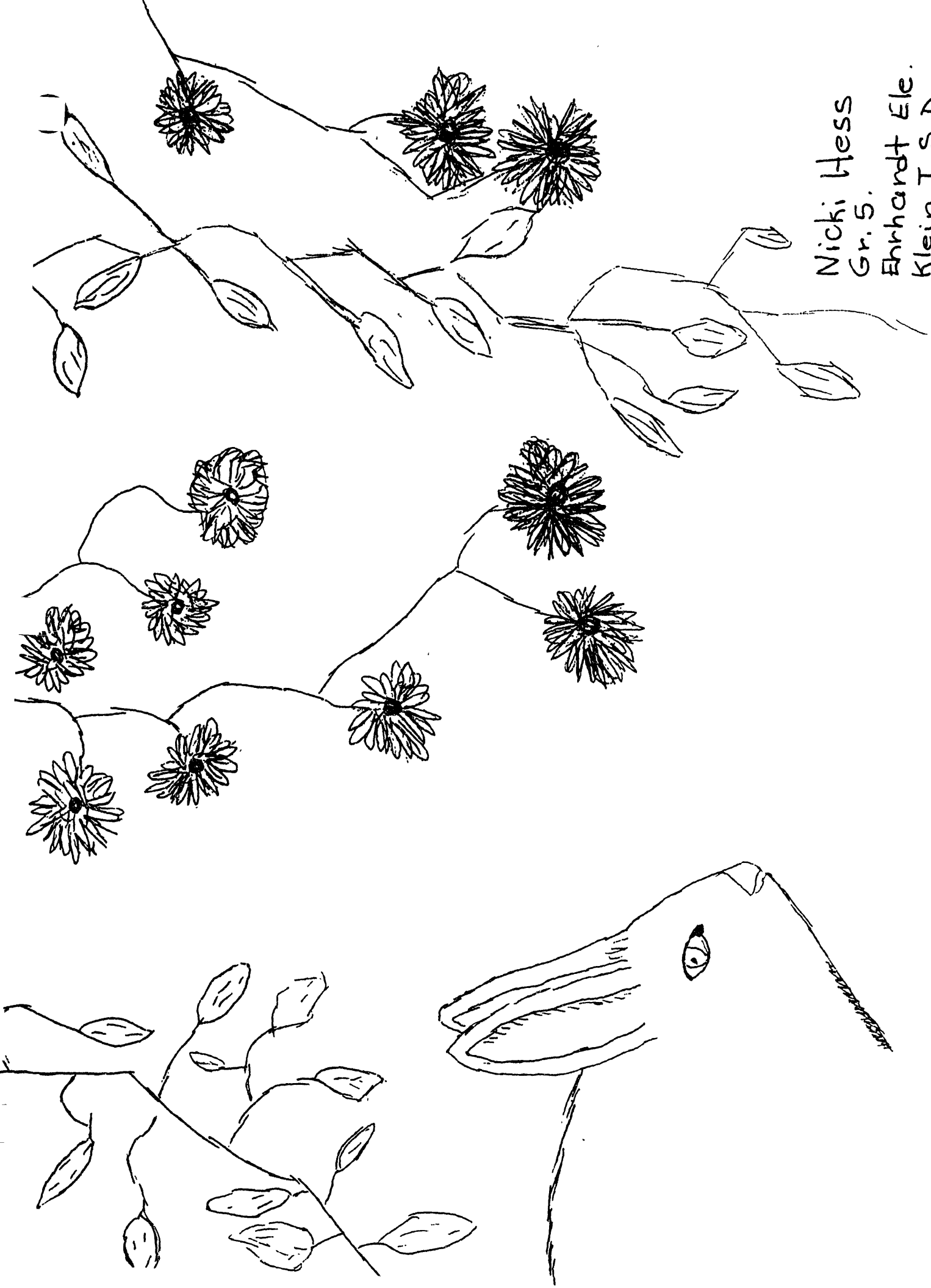
Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: October 15, 1993

For further information, please call: (512) 483-5244

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Withdrawn Sections

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*.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 91. Texas Register

Filing of Documents

• 1 TAC §91.23

The Office of the Secretary of State has withdrawn from consideration for permanent adoption a proposed amended §91.23 which appeared in the April 13, 1993 issue of the *Texas Register* (18 TexReg 2452). The effective date of this withdrawal is September 7, 1993.

Issued in Austin, Texas, on September 7, 1993

TRD-9328450 Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 7, 1993

For further information, please call: (512) 463-5561



Document Format

• 1 TAC §91.51

The Office of the Secretary of State has withdrawn from consideration for permanent adoption a proposed amended §91.51 which appeared in the April 13, 1993 issue of the *Texas Register* (18 TexReg 2455). The effective date of this withdrawal is September 7, 1993.

Issued in Austin, Texas, on September 7, 1993

TRD-9328454 Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 7, 1993

For further information, please call: (512) 463-5561



Classification Systems

• 1 TAC §91.73

The Office of the Secretary of State has withdrawn from consideration for permanent adoption a proposed amended §91.73 which appeared in the April 13, 1993 issue of the *Texas Register* (18 TexReg 2456). The effective date of this withdrawal is September 7, 1993.

Issued in Austin, Texas, on September 7, 1993

TRD-9328457 Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 7, 1993

For further information, please call: (512) 463-5561





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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 IV. Office of the Secretary of State

Chapter 91. Texas Register

The Office of the Secretary of State, Texas Register, adopts amendments to §§91.1, 91.12, 91.21, 91.24, 91.25, 91.28, 91.31, 91.41-91.43, 91.71, 91.72, and 91.122, the repeal of §§91.11, 91.22, 91.26, 91.27, 91.29, 91.30, 91.32-91.39, 91.52-91.59, 91.91, 91.93-91.96, 91.98, and new §§91.19, 91.22, and 91.91, concerning policies and procedures. Amended §§91.1, 91.21, 91.25, 91.28, 91.42, 91.43, 91.71, 91.72, and new § 91.22 and §91.91 are being adopted with changes to the proposed text as published in April 13, 1993, issue of the *Texas Register* (18 TexReg 2451). Sections 91.11, 91.12, 91.19, 91.22, 91.24, 91.26, 91.27, 91.29, 91.30, 91.31-91.39, 91.41, 91.52-91.59, 91.91, 91.93-91.96, 91.98, and 91.122 are being adopted without changes and will not be republished. Section 91.23, concerning Filing Procedures, §91.51, concerning Electronic Format, and §91.73, concerning Structure; Terminology, are being simultaneously withdrawn in this issue of the *Texas Register*. The sections will be repropose at a later date.

These rules are being amended, repealed, and replaced to update and clarify Texas Register filing procedures. Effective September 1, 1993, the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a); the Texas Open Meetings Act (Texas Civil Statutes, Article 6252-17), and the use of private consultants by state agencies (Texas Civil Statutes, Article 6252-11c) became part of the Government Code. The Texas Register has made those citation changes within these rules. In §91.25(g), concerning emergency rules, reference was made to a rule that is being repealed. The Register changed this subsection to correctly reference emergency adoptions under the Insurance Code, Article 5.96 and 5.97.

The following are comments received regarding adoption of the proposals.

An individual commented that the amendment to the definition in §91.1, from "electronic transmission" to "electronic means" was inconsistent with pages 22 and 23 of the Texas Register Form and Style Manual. The Form and Style Manual states that an agency should omit verbs like "is" or "means." The Register agrees. "Electronic transmission" is accurate.

Concerning §91.22, an individual commented that the language regarding the calculation of effective dates "doesn't make grammatical sense." The Register agrees with the commenter and has rewritten the section.

A comment was received from an individual regarding the title "undesignated head." The commenter felt that this terminology is not commonly used, therefore is confusing to the reader. The individual suggested that we replace "undesignated head" with the word "division." The commenter also recommended that we amend §91.23 and §91.71 to reflect this change. This suggestion will be addressed in future rulemaking.

Regarding §91.24, procedure for filing withdrawals, an individual commented that the boldface text indicating new language was confusing. The commenter said it was difficult to tell what was being proposed for change. The Register agrees. The rule is being adopted with changes.

An individual commented on the replacement of the term "must" with "shall." The commenter wanted clarification on when to use "shall" instead of "must." The commenter said that "must" was used in several places in the rules. "Shall" indicates obligation or force and should be used instead of "must" when drafting rules. Therefore, the rules which contain "must" are being adopted with changes.

Regarding §91.28, one commenter pointed out a typographical error in subsection (c). The word "to" was inadvertently inserted before "follow-up." The sentence is rewritten and adopted with changes. Another commenter suggested that the Register install a fax modem board. The Register will consider this advice.

An individual commented that in §91.31(a) the usage of the word "printed" instead of "typed" could be interpreted to mean three double-spaced pages when printed in the *Texas Register*. The Register disagrees with this comment because the word "typed" does not apply to rules filed electronically.

Concerning §91.42(c)(3), an individual asked why "material" was substituted for "document" when "document" was used elsewhere in areas of the rule. The word "material" refers to the information adopted by reference, which accompanies the document being filed.

Concerning §91.71, an individual commented that the word "will" was used instead of "shall" in paragraph (3). The commenter asked why it was used only in paragraph (3). This was an error. The section is adopted with changes. Another individual commented that the usage of "which" instead of "that" throughout this rule was an improper use of the

pronoun "which." The Register agrees and has made the change.

Concerning §91.72, a commenter said that in subsection (a) a semicolon and conjunction "and" should be between paragraphs (1) and (2) because the language in subsection (a) implies that both paragraphs are a requirement for a rule number. The commenter said the word "section" in paragraph (2) should be changed to "rule" to be consistent with the other Texas Register rules. The Register agrees with both these comments and is adopting this rule with changes.

An individual pointed out some typographical errors in §§91.25(b) and (d), 91.28(e)(2), and 91.43. These rules are being corrected and adopted with changes.

Several comments were received regarding §91.51 and §91.73. These rules are being withdrawn.

Comments were received from the Texas Department of Human Services, Texas Workers' Compensation Commission, Lower Colorado River Authority, and Scanlan & Buckle, P.C., Attorneys At Law.

Definition of Terms

• 1 TAC §91.1

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, *Texas Register*, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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

Electronic transmission—The submission of data via word or data processors over dedicated cables, commercial lines, or diskette.

Rule—Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency.

(A)-(C) (No change.)

Section—A reference to a specific rule.

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

Issued in Austin, Texas, on September 1, 1993

TRD-9328447

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512)
463-5561

◆ ◆ ◆
Agency Liaison

• 1 TAC §91.11

The repeal is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

This agency hereby certifies that the rules 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 September 1, 1993.

TRD-9328448

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective Date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512)
463-5561

◆ ◆ ◆
• 1 TAC §91.12

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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

Issued in Austin, Texas, on September 1, 1993.

TRD-9328449

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective Date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512)
463-5561

◆ ◆ ◆
Filing of Documents

• 1 TAC §§91.19, 91.21, 91.22,
91.24, 91.25, 91.28, 91.31

The new sections and amendments are adopted under the Government Code, Chap-

ter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

§91.21. Compliance; Nonacceptance of Documents.

(a) Agencies shall file the following documents with the Texas Register, Office of the Secretary of State, for publication: emergency, proposed, and adopted rules; notices of open meetings; appointments, executive orders of the governor of Texas; summaries of requests for opinions, opinions, and open records decisions of the attorney general of Texas; summaries of requests for opinions and opinions issued by the Texas Ethics Commission; election law opinions of the Texas secretary of state under Texas Civil Statutes, Article 6252-9c; notices filed by the banking commissioner under Texas Civil Statutes, Article 342-401a(B)(6); notices filed by the savings and loan commissioner under Texas Civil Statutes Article 5069-1.07; notices filed by the Office of Consumer Credit Commissioner under Texas Civil Statutes Article 5069-1.04; notices filed by agencies, regional councils of government, and the Texas State Library under the Government Code, Chapter 551; notices of proposals and adoptions filed by the Texas Department of Insurance pursuant to the Insurance Code, Article 5.96 and Article 5.97; proposal requests for private consultant services under the Government Code, Chapter 2254; Court of Criminal Appeal rules of appellate procedure and rules of criminal evidence under Texas Civil Statutes, Article 1811f, §3; and miscellaneous notices of general interest to the public of Texas.

(b) Agencies shall file all documents with the Texas Register, Office of the Secretary of State, in accordance with the format, content, and procedural requirements specified by the Government Code, Chapters 2001 and 2002, and by the rules and the Form and Style Manual of the Texas Register, Office of the Secretary of State. The Office of the Secretary of State has the authority to administer the governing statutes cited in this section as they relate to the Texas Register. Under the requirements contained in the Government Code, Chapter 551, Chapter 2001, Chapter 2002, and Chapter 2254, as they relate to the Texas Register, and the requirements in the rules of the Texas Register contained in this chapter, the Texas Register, Office of the Secretary of State, may reject for filing and publication any document that does not conform to these requirements. If the Texas Register rejects a document the staff of the Texas Register shall notify the liaison of the issuing agency and explain why the document was rejected. After filing a document with the Texas Register, the liaison or alternate shall be available to answer questions

about the document. If the Register fails to reach the liaison, the Register may reject or postpone publication of the document.

§91.22. Calculation of Effective Dates.

(a) Proposed rule adoption date. To calculate the earliest possible date of adoption, count the first calendar day after the date of publication as day one of the 30-day period. The earliest date agencies may submit rules for adoption is the 31st day after the publication date.

(b) Adopted rule effective date. To calculate the effective date, count the first calendar day after the date of filing with the Texas Register as day one of the 20-day period. The earliest date rules may become effective is the 21st calendar day after the filing date.

(c) Emergency rule effective date. Emergency action shall become effective immediately on filing or on a specified date fewer than 30 calendar days after filing. The Government Code, Chapter 2001, limits the effectiveness of emergency rules to 120 days, renewable once for no more than 60 days, for a maximum of 180 days. To calculate the expiration date, count the effective date as day one of the effective period. The expiration date is the 121st calendar day, or 181st calendar day if agencies renew emergency action during the last 20 days of the original period of effectiveness.

§91.25. Procedure for Filing Emergency Rules.

(a) Under the Administrative Procedure Act, (APA), §2001.034, emergency rulemaking action may be promulgated on fewer than 30 days' notice.

(b) The notice of adoption of emergency action shall contain the the following information in the order shown:

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

(c) (No change.)

(d) After the original filing of an emergency amendment to a permanently adopted rule or the emergency adoption of a new rule, an emergency amendment may be made to the original action as many times as needed during the 180-day period of effectiveness of the original emergency action (120 days original period of effectiveness plus 60 days renewal of effectiveness). All such amendments shall have identical expiration dates. An agency shall not withdraw an emergency rule and file it a second time in order to extend the 180-day effective period.

(e) Emergency action may become effective immediately on filing or on a stated date less than 30 days after filing.

The effective date shall not be earlier than the file date. The APA limits the effectiveness of emergency action to 120 days, renewable once for no more than 60 days, for a maximum of 180 days. The period of effectiveness shall be calculated by counting the effective date as day one. The expiration date is the day after the final full calendar day in the count.

(f) Agencies may renew the effective period of emergency action for 60 days. Agencies shall file the renewal notice during the last 20 days of the original period of effectiveness. Agencies shall not renew the effective period after the expiration date.

(g) Notice of emergency adoption under the Insurance Code, Article 5.96 and Article 5.97.

(l) Actions under these Articles are exempt from the requirements of APA and are subject to the requirements of the Insurance Code, Article 5.96 and Article 5.97, Chapter 5, Subchapter L.

(2) Emergency action under Article 5.96 and Article 5.97 may become effective immediately on filing or on a stated date less than 15 days after filing. The action shall not have an effective date earlier than the file date.

§91.28. Procedure for Filing Notice of Open Meeting.

(a) Agencies shall submit notices of open meetings to the *Texas Register*, Office of the Secretary of State, in accordance with the provisions of the Texas Open Meetings Law, Government Code, Chapter 551.

(b) Notice of an open meeting shall be submitted on two copies of Form TR-3, Submission Form-Notice of Open Meeting and on one three-inch by five-inch index card or by faxing one copy of the Form TR-3 and a copy of the index card, according to the requirements in the Texas Register Form and Style Manual.

(c) If the complete agenda cannot be stated in the space provided on the submission form, the agency shall summarize the agenda in the space provided for publication purposes only. The agency shall then attach three copies of the complete agenda for filing, one copy attached to each submission form and one copy attached to the index card. When an agenda is summarized, the Register shall publish with the notice a statement that the agenda is summarized for publication purposes. When agencies fax open meeting notices to the Texas Register, they shall fax only one copy. Agencies may not fax documents with more than a five-page agenda. The agency shall not follow-up a faxed open meeting notice by mailing a duplicate.

(d) (No change.)

(e) The Texas Register shall post meeting notices filed before 4:30 p.m. on the day they are filed. The Register shall post meetings filed after 4:30 p.m. on the next business day. Agencies shall phone (512) 463-5561 to confirm that the Texas Register received fax filings. Agencies shall file an emergency notice 30 minutes before the two-hour requirement imposed by the Texas Open Meetings Law. In order to meet the 72-hour requirement imposed by the Texas Open Meeting Law, regional agencies and institutions of higher education which use the U.S. Postal Service to deliver a notice of open meeting are encouraged to have such notice postmarked at least 10 days prior to the scheduled day of the meeting. For a notice received too late to comply with the 72-hour provision, the issuing agency will be notified by telephone of the late receipt. The Texas Register shall not accept for filing a late notice unless the agency wishes to take one of the following four alternative courses of action.

(l) (No change.)

(2) The agency may authorize the Texas Register to designate the meeting as an emergency meeting if the agency determines such designation is justified under the emergency provisions of the open meetings law. An agency shall not designate a meeting as an emergency merely for purpose of administrative expediency. If an agency has determined there is just cause for the emergency it shall state the reason for emergency.

(3)-(4) (No change.)

(f) (No change.)

(g) The seven-day posting requirement imposed by the Texas Open Meetings Law is interpreted by the *Texas Register*, Office of the Secretary of State, to mean seven full 24-hour periods preceding the day of the meeting. In calculating the seven-day period, the first day is the first calendar day after the notice is posted. The day of posting and the day of the meeting may not be included in calculating the seven-day period. Posting deadlines are not related to publication in the Texas Register.

(h) (No change.)

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

Issued in Austin, Texas, on September 1, 1993.

TRD-9328452

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561

Filing of Documents

• 1 TAC §§91.22, 91.26, 91.27, 91.29, 91.30, 91.32-91.39

The repeals are adopted under the Government Code, Chapter 2002, Subchapter B., §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Act.

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

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TRD-8328451

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561

Adoption By Reference: Adoption Under Federal Mandate

• 1 TAC §§91.41-91.43

The amendments are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

§91.42. Procedure for Filing a Document by Reference.

(a) (No change.)

(b) Notice of the adoption by reference shall contain information as required by the type of action being taken (e.g.: emergency, proposed, final).

(l)-(2) (No change.)

(c) An agency shall submit an adoption by reference to the Texas Register according to the following procedure.

(l)-(2) (No change.)

(3) One copy of the adoption by reference document shall be attached to one of the submission forms.

(d) If an agency wishes to adopt amendments to a document previously adopted by reference, it shall amend the section adopting the document by reference. If the adoption by reference document is being amended but the text of the section remains unchanged, the agency shall submit the document listing the section title and number and the words "(No change)".

(e) Notice periods are as follows.

(1) Full notice. The notice period for adopting a document by refer-

ence shall be the same as the usual period for rules.

(2) (No change.)

§91.43. Procedure for Filing a Federally Mandated Document.

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

(c) If Federal law or rule specifies a date that does not allow time for notice of proposed action, the agency may take final action on a new rule or an amendment to an existing rule without prior notice. In the notices of final action agencies shall fulfill all format and content requirements prescribed for final action on rules. The text of the document will not show new language and deleted language; it will be the final version of the rule.

(d) (No change.)

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

Issued in Austin, Texas, on September 1, 1993.

TRD-9328453

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561



Document Format

• 1 TAC §§91.52-91.59

The repeals are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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

Issued in Austin, Texas, on September 1, 1993.

TRD-9328455

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561



Classification Systems

• 1 TAC §91.71, §91.72

The amendments are adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

§91.71. Classification Systems. When classifying agency rules, the following terms shall have the following meanings.

(1) Title identifies the specific classification of subject matter under which an agency has been grouped by the Texas Register, according to the Texas Administrative Code format. The title subject matter is preceded by the appropriate Arabic numeral designation.

(2) (No change.)

(3) Chapter of rules identifies:

(A) a group of rules that are related to the same general subject;

(B) a group of rules that depend on a common set of definitions; or

(C) a group of rules that are independent of another chapter in meaning or effect.

(4) Subchapter of rules identifies a group of rules related to the same general subject within a chapter.

(A) The division of a chapter of rules into subchapters is optional. If an agency files two or more subchapters of a chapter at the same time, the subchapters shall be filed on separate submission forms.

(B) (No change.)

(5) Undesignated heading identifies a group of rules related to a specific subject within a chapter or subchapter. If an agency files two or more undesignated headings of a chapter or subchapter at the same time, the undesignated headings shall be filed on separate submission forms.

§91.72. Numbering Schemes.

(a) Identification. Each rule shall be identified by a section number, divided by a decimal point into two units, as follows:

(1) the chapter in which the individual rule is contained; and

(2) the section number within the chapter.

(b) (No change.)

This agency hereby certifies that the rules as adopted have been reviewed by legal counsel

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

Issued in Austin, Texas, on September 1, 1993.

TRD-9328456

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561



Submission Forms

• 1 TAC §91.91

The new section is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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

Issued in Austin, Texas, on September 1, 1993.

TRD-9328459

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561



• 1 TAC §91.91

The new section is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

§91.91. Use of Submissions Forms. Each document submitted to the *Texas Register* for publication shall be accompanied by the proper submission form, filled out complete in accordance with the requirements listed in the *Texas Register* Form and Style Manual. The submission forms may be faxed, hand delivered, or mailed.

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 September 1, 1993.

TRD-9328458

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561

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Subscriptions, Individual Copies, and Reprints

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• 1 TAC §91.122

The amendment is adopted under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

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

Issued in Austin, Texas, on September 1, 1993.

TRD-9328460

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date: September 28, 1993

Proposal publication date: April 13, 1993

For further information, please call: (512) 463-5561

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**TITLE 22. EXAMINING
BOARDS**

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**Part XXIII. Texas Real
Estate Commission**

◆ ◆ ◆
**Chapter 535. Provisions of the
Real Estate License Act**

◆ ◆ ◆
**Requirements for Licensure
• 22 TAC §535.51, §535.53**

The Texas Real Estate Commission adopts amendments to §535.51, concerning general requirements for licensure and to §535.53, concerning corporations and limited liability companies, without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4926).

The amendment to §535.51 adopts by reference application forms used by corporations and limited liability companies to obtain a real estate broker license.

The amendment to §535.53 conforms the section with recent amendments to Texas Civil Statutes, Article 6573a, regarding the designated officers and managers of licensed corporations and limited liability companies and treats limited liability companies in the same manner as corporations are treated in general provisions concerning the need for a license, residency requirements, and application of the law to the business entity.

The amendments are necessary to ensure that corporations and limited liability companies comply with the law.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 September 3, 1993.

TRD-9328347

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: September 24, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 465-3900

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• 22 TAC §535.66

The Texas Real Estate Commission adopts an amendment to §535.66, concerning educational programs and accreditation, without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4927).

The amendment permits schools accredited by the commission to advertise their participation in job retraining programs recognized by state, federal, or local government. The amendment is necessary to make persons seeking to enter the real estate industry aware of job retraining programs that may be offered by accredited schools.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 September 3, 1993.

TRD-9328346

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: September 24, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 465-3900

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Fees

◆ ◆ ◆
• 22 TAC §535.101

The Texas Real Estate Commission adopts an amendment to §535.101, concerning fees,

without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4928).

The amendment increases from \$10 to \$20 the fee for filing a request for a license for an additional office or place of business for a real estate broker or for replacing a lost or destroyed license. The amendment also sets new fees for filing requests for a license due to a change of name or return to active status, preparation of a license history or filing an application for a moral character determination.

Adoption of the amendment is necessary to maintain adequate funding for the commission's appropriative authorization.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §11, which authorize the Texas Real Estate Commission to charge and collect fees.

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 September 3, 1993.

TRD-9328345

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: November 1, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 465-3900

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**Suspension or Revocation of
Licensure**

◆ ◆ ◆
• 22 TAC §535.164

The Texas Real Estate Commission adopts an amendment to §535.164, concerning disclosure of agency, with changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4928). The amendment adopts by reference a revised disclosure form which licensees will be required to use beginning November 1, 1993; the disclosure form contains information about the services brokers provide to consumers, describes agency relationships and provides space for the broker to disclose that the broker represents the owner, the buyer, or both.

Adoption of the amendment is necessary to ensure that disclosure of representation is made to consumers and to ensure that consumers are aware of their right to choose the type of representation they desire.

Written comments in support of the proposed amendment with suggested changes were received from the Texas Association of Realtors, the San Angelo Association of Realtors, the Williamson County Association of Realtors, Inc., and more than 100 individuals. The Texas Consumer Association opposed adop-

tion of the proposed disclosure form. The Texas Real Estate Buyer Agents Association did not specifically support or oppose the amendment but commented generally in support of disclosure necessary for informed consent by consumers. A public hearing on the proposed amendment was held August 31, 1993.

In response to written comments and suggestions received at the public hearing, the commission made a number of changes to the proposed amendment and disclosure form. The disclosure form was renumbered as TREC Agency Disclosure Form 3 to distinguish it more readily from existing forms. Language derived from Senate Bill 314, 73rd Legislature, was added to clarify that a broker may not represent more than one party unless the broker complies with specific requirements of the law. A disclosure of agency was added, so the broker could mark the appropriate box indicating that the broker represents the owner, the buyer, or both. The phrase "if any" was added to the disclosure of agency to clarify that no block is to be checked if the broker does not represent a party when the form is provided. The confirmation by the consumer was modified so that the consumer acknowledges receipt of the form and is advised that agreements the consumer may sign may affect or change agency relationships. Language was added to clarify that use of the form is required in residential, commercial, and other types of real estate transactions. The signature block for the consumer was modified to clarify that the term "owner" includes landlords and their authorized representatives and that the term "buyer" includes tenants and their authorized representatives. The reverse side of the proposed version of the disclosure form contained the text of the section; upon final adoption, no text is shown on the reverse side.

Commenters suggested that the box which indicates the licensee represents both parties should be removed from the form, reasoning that at the time the form would be given, the licensee would not have obtained an agreement to represent both parties. Since it is possible to have obtained agreements to represent both parties prior to the time the disclosure form is completed and signed, however, the commission determined that the disclosure box should not be removed. Commenters also suggested that the disclosure box pertaining to representation of the owner be modified to include references to listing agents and subagents. The commission determined that the modification might create confusion for the consumer and declined to make the change.

The commission also modified the guidelines for use of the agency disclosure form. The guidelines were rearranged so that the provisions concerning use of the form were first in sequence. To clarify when the form is to be provided or when disclosure of representation is to be made, the word "upon" was replaced with the words "at the time of." A new subsection was added defining the terms "buyer," "seller," "landlord," or "tenant" to include their authorized representatives other than real estate licensees representing the buyer, seller, landlord, or tenant. An exception was deleted concerning situations in which the prospec-

tive buyer, seller, landlord, or tenant is represented by another real estate licensee; although most commenters urged the commission not to require the disclosure form to be provided to a consumer who is already represented by another licensee, the commission determined that written disclosure of representation using the disclosure form is necessary to ensure that the consumer knows that the licensee represents the other party in the transaction. An exception was provided, however, for licensees dealing with their own principal, such as a subagent meeting with the owner. Several commenters urged the commission to require written disclosure of representation to a licensee representing the other party to the transaction. The commission determined that oral or written disclosure at the discretion of the licensees would be adequate between licensees who should understand agency relationships without the use of the disclosure form. The commission concurred with a comment suggesting that use of the disclosure form was unnecessary if the first meeting or communication occurs after the parties have signed a contract; the commission added an exception to accomplish the desired result. The commission declined to exempt commercial real estate transactions in response to a comment, determining that disclosure of representation is necessary in commercial transactions. Responding to comments that the proposed section did not adequately address meetings or communications at a time when the licensee does not represent any party, the commission added language requiring the licensee to complete the appropriate portion of the form relating to disclosure of agency. If none of the disclosure boxes is applicable, the licensee would be required only to sign the form and provide it to the consumer. A commenter suggested that the section be amended to require the licensee to obtain the signature of the consumer; the commission determined that it could not compel a consumer to sign the form and declined to make the requested change.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.164. Disclosure of Agency.

(a) The Texas Real Estate Commission adopts by reference Agency Disclosure Form 3, approved by the Texas Real Estate Commission in 1993. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Except as provided by subsection (e) of this section, a real estate licensee shall furnish a prospective buyer, seller, landlord, or tenant with a copy of TREC Agency Disclosure Form 3 ("the form") at the time of the first of the following events regarding a real estate transaction:

(1) a face-to-face meeting with the licensee; or

(2) a written communication from the licensee.

(c) The licensee shall complete the appropriate portion of the form relating to disclosure of agency and shall sign the form.

(d) For the purposes of this section, the terms "buyer", "seller", "landlord", or "tenant" include an authorized representative such as an attorney, trustee or attorney in fact, but do not include, a real estate licensee representing the buyer, seller, landlord, or tenant. The term "licensee" includes the licensed associates of a licensee.

(e) A real estate licensee is not required to provide a copy of the form to a prospective buyer, seller, landlord, or tenant in the following instances:

(1) the licensee is acting solely as a principal and not as an agent;

(2) the proposed transaction is for a residential lease for one year or less and no sale is involved;

(3) the licensee is representing the buyer, seller, landlord or tenant with whom the licensee is meeting or communicating, by a prior agreement with another real estate licensee who represents the same person;

(4) the written communication from the licensee is a solicitation of business or an initial response to a request for information;

(5) the face-to-face meeting with a licensee occurs at a property which is being held open for prospective purchasers, and there is no substantive discussion regarding a transaction; or

(6) the face-to-face meeting with the licensee or the written communication from the licensee occurs after the parties to the transaction have signed a contract to buy, sell, rent, or lease the real property concerned.

(f) A licensee who represents a principal in a proposed real estate transaction shall disclose the representation at the time of the first contact with another licensee representing the other principal. The disclosure may be made orally or in writing.

(g) The licensee should retain a copy of the form signed by the prospective buyer, seller, landlord, or tenant, or authorized representative in order to demonstrate compliance with this section.

(h) Licensees may use a revised disclosure form adopted under this section prior to the effective date of a revision.

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

Issued in Austin, Texas, on September 3, 1993.

TRD-9328344

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: November 1, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 465-3900

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practices

Subchapter A. Unfair Competition and Unfair Practices of Insurers, and Misrepresentation of Policies

• 28 TAC §21.7

The State Board of Insurance of the Texas Department of Insurance adopts new §21.7, relating to certain practices in the setting or use of rates or rating manuals for property and casualty insurance. The adoption covers the new section published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4933). Consideration of adoption of the new section at a public hearing under Docket Number 2043 was scheduled for, and convened, August 30, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin. The hearing was concluded August 31, 1993. As a result of the many comments received during the comment period and the hearing pursuant to Docket Number 2043, the adoption includes changes to the new section, including an amendment to subsection (c), and a new subsection (d), which provides the definition for "effect of discrimination."

The new section is necessary to assure implementation of those statutes which prohibit discriminatory practices in accordance with the statutes which grant rulemaking authority to the Department of Insurance. The new section identifies and prohibits methods of discrimination in the Texas market for property and casualty insurance which are detrimental to consumers, and represent the most fundamental form of unfairness in the marketing and pricing of these lines of insurance. The new section prohibits intentional acts of discrimination in the setting or use of rates or rating manuals. In addition, any procedure, practice, method, underwriting guideline or other activity used by an insurer to determine whether to insure or continue to insure an applicant, and at what rate, which has the effect of discriminating on the basis of race, color, religion, or national origin is also prohibited under this rule. Discrimination on the basis of geographic location, age, sex, or disability not justified by sound actuarial principles is prohibited by this section. Unfair discrimination among insureds or prospective insureds having a like hazard is also prohib-

ited by this section. This section will provide a meaningful regulatory and enforcement tool to address imbalances in the pricing and availability of property and casualty insurance which have been brought to the attention of the Department through detailed statistical analyses of various insurance markets, comments of industry representatives, comments from individual consumers, organizations of consumers and specific practices known by the Department to exist in the Texas market. Prior to the adoption of this section, the Department of Insurance performed a detailed statistical analysis of the private passenger automobile insurance market written through the Texas Automobile Insurance Plan (TAIP) and the market for homeowners insurance using zip code, census, and other data. The TAIP is the residual market for automobile insurance. This report reflects that, in the major urban areas of Texas, there is a significant statistical relationship between high levels of TAIP assignments and low housing values and high proportions of rental property. In addition, in Houston and Dallas-Fort Worth, there also appears to be a significant statistical relationship between high levels of TAIP assignments and high proportions of Hispanics and other minorities. None of these factors appear to be related to the hazard posed by these drivers who have been rejected by insurers in the voluntary market and assigned to the TAIP. These facts are a significant regulatory concern since the TAIP is primarily composed of drivers who are rejected by the voluntary auto market. Further, in Houston, there is a statistical relationship between minority concentrations and the availability and price of homeowners insurance. The geographic and racially-related underwriting and pricing patterns reflected by this analysis are of significant concern to the Department. This section is an effective and appropriate regulatory response. Similarly, those factors unrelated to risk which determine the availability and price of insurance result in unfair discrimination. This section will prohibit these unfair practices. Additional information has been presented to the Department of Insurance which indicates that insurers use underwriting guidelines and other factors unrelated to risk or hazard in the determination of rates. The Department of Insurance also has received consumer complaints alleging unfair declinations and nonrenewals as well as a lack of availability of insurance. The new section is intended to provide clear regulatory means for addressing these types of market conditions. The adoption includes two nonsubstantive changes to the section. Subsection (c) has been clarified to accommodate provisions in the Insurance Code that include references to exceptions to penalties for discrimination. New subsection (d) has been added to define the term "effect of discriminating." The definition provides that effect of discriminating means an activity that actually or predictably results in discrimination.

The new section sets out the purpose of the section, stating that it is designed to prohibit certain practices or activities in the setting or use of rates or rating manuals by property and casualty insurers. Section 21.7(b) contains definitions of essential terms. These include the terms "the setting or use of rates or

rating manuals" and "insurer." The definition of insurer makes the section applicable to insurance agents by including any person or entity doing the business of insurance as defined in the Insurance Code, Article 1.14-1. Section §21.7(c) identifies specific insurer activities which are prohibited in the setting or use of rates or rating manuals for property or casualty insurance in Texas. The specific practices identified as unfair and prohibited include using any procedure, practice, method, underwriting guideline, or other activity which has the purpose or effect of discriminating on the basis of race, color, religion, or national origin; discriminating on the basis of geographic location, age, sex, or disability, unless justified by sound actuarial principles; and unfairly distinguishing or unfairly discriminating among insureds or potential insureds having a like hazard. Adopted §21.7(d) provides a definition for "effects of discrimination," providing that such effects are any which actually or predictably result in discrimination. Section §21.7(e) provides that this section is cumulative of other provisions of the Insurance Code, other statutory and common law, and rules adopted by the Texas Department of Insurance.

Prior to and during the hearing on the adopted section, a total of 23 commenters submitted comments in connection with publication of proposed new §21.7. Among those commenting on the proposed new section, two commenters combined into one submission; those matters which they wanted to bring to the Board's attention. For this reason, although there were 22 sets, they represented a total of 23 commenters. Of those who commented, nine were in favor of the proposed section as published, 13 were against the proposed section as published, and one commented on the section, rather than for or against. There were comments against the section generally, which had specific recommendations and indications that withdrawal of opposition to the rule would result if the recommendations were embraced by the Board. Those who submitted comments in favor of the proposed section included Advocacy Inc., Consumers Union, The Disability Policy Consortium, a legislator, three individual consumers, an insurance adjuster, and an insurance agent. A member of the Association of Communities Organized for Reform Now (ACORN) testified in favor of the proposed section at the hearing; ACORN later withdrew support for the section because of a proposed staff amendment to the section which itself was later withdrawn. Those who submitted comments against the proposed section as published included the Alliance of American Insurers, the Association of Fire and Casualty Companies in Texas (AFACT), Farmers Insurance Group, the Independent Insurance Agents of Texas (IIAT), the National Association of Independent Insurers (NAII), the Office of Public Insurance Counsel (OPIC), Progressive Insurance Companies, State Farm Insurance Companies, the Texas Automobile Insurance Service Office (TAISO), Texas Citizen Action, the Texas Life Insurance Association (TLIA), and the United Services Automobile Association (USAA). Public Citizen, Texas, commented on the section as proposed.

Comments of those favoring adoption of the section were as follows:

1. The rule will support efforts to correct discrimination against particular classes of individuals who are much different from what the insurance industry has historically believed.
2. The proposed section is timely in that the establishment of the types of practices required by the proposed rules will be a benefit to all consumers in the state.
3. The rule is necessary to bring unfair discrimination, if that is occurring, to an end in this state. It also should provide a deterrent to any insurer which might be relying on an underwriting standard unrelated to risk.
4. The section as proposed represents a major step forward for the insurance consumers of Texas, including those who are significantly affected by current practices of the insurance industry. The proposal is a good attempt to address practices which have the effect, whether intended or not, of making insurance inaccessible to many consumers. The adoption of the proposed section will permit the Board to fulfill its mission to regulate the industry in a manner that is fair to both consumers and to insurers.
5. Statutory provisions mandating certain insurance coverage makes it more important than ever for appropriate controls for consumer protection to be in place. Adoption of the proposed section is one means by which to achieve that objective.
6. Though the section as proposed is not perfect, it does represent an immediate response to an immediate and material problem. Further refinements in the future no doubt will be needed, but the rule is needed now, even if future amendments are required. Comments on the section are as follows: The comment on the rule supported the concept of addressing unfair discriminatory practices. But it emphasized the need for a series of definitions and some other provisions to make the section more effective. The need for a definition of sound actuarial principles was emphasized as important in achieving greater certainty about sound actuarial bases for practices. The commenter submitted a proposal for such definition, and others. The Department appreciates both the comment and the efforts of the commenter in this regard, but does not believe the definition submitted for sound actuarial principles should be incorporated at this time. It does not believe the proposed definition would achieve the desired result. This departmental perspective is based on the nature of sound actuarial principles and how they are derived. Actuarial principles are defined by actuaries in publications by the American Academy of Actuaries. Sound actuarial principles would be widely understood to mean an expectation that each group and combination of groups (e. g., geographical division, males, females, etc.) in essence "pay their own way." For this reason, the final adoption does not incorporate a definition of "sound actuarial principles." The Department emphasizes, however, that it will continue to monitor the matter of use of sound actuarial principles to assess whether future circumstances warrant development and adoption of such a definition.

Comments and responses against the section are as follows:

1. Several commenters, including Farmers Insurance Group, took the position that the types of unfair discrimination sought to be prohibited by this proposed rule are not specifically listed in the Insurance Code, Article 21.21, §4, and therefore that such acts are beyond the scope of Article 21.21, and beyond the authority of the Board to prohibit. The Department fundamentally disagrees with these comments. In challenging the Board's authority to adopt this rule, Farmers Insurance Group alleges that the Board "...has not been given any direct or specific authority to generally regulate companies' underwriting practices," and suggests that companies presently have the right to determine with whom they should do business without regulatory scrutiny. In order to reach this conclusion, Farmers advocates a construction of the Insurance Code, Article 21.21 which Farmers offered to and had rejected by the 73rd Legislature. On page 8 of its comments, Farmers misquotes Article 21.21, §13(a), by omitting the provision of Article 21.21 which explicitly provides that the Board's authority to promulgate rules and regulations is not limited to the express provisions of this article. It is instructive to note that Farmers requested the 73rd Legislature to amend Article 21.21, §13 (a) by offering the House Insurance Committee Amendment 50 to HB 1461 which sought to limit the Board's rulemaking authority to the express provisions of Article 21. 21, §4. This amendment by Farmers failed. While Farmers' comments repeatedly accuse the Board of acting as a "super legislature" in proposing new §21.7, in fact, it is Farmers Insurance Group which now construes Article 21.21 as if its amendment had passed. Section 13(a) of Article 21.21 explicitly provides the State Board of Insurance with broad statutory authorization to promulgate rules and regulations "as is necessary in accomplishment of the purposes of this Article and Article 21.20, including, but not limited to such express provision within the purposes of these articles as it deems necessary..." By not limiting this authority to the "express provisions of the act," it is clear that the Board has the power to make rules to accomplish all of the purposes of the Act, not just to refine the Article 21.21 §4 laundry list. Further, Article 21.21, §1(b) provides that the Act is to be liberally construed and applied to promote the underlying purpose of the Act, which is to regulate trade practices in the business of insurance by defining or providing for the determination of all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting those practices. The Department notes there are existing rules adopted by the Board under the authority of Article 21.21 which prohibit certain unfair underwriting practices based on sex or marital status. Those commenters that challenge the Board's authority under Article 21.21 merely ignore these historical Board actions. The Department believes that the methods used by companies and agents in the process of risk selection and pricing in property and casualty insurance represent core functions of the insurance system and are virtually indivisible. The driving force be-

hind this process is usually referred to as "underwriting." The Department believes that the commenters challenging the Board's authority under Article 21.21 are suggesting that racial discrimination, no matter how overt or apparent in these key functions of risk selection and pricing, would not constitute an unfair trade practice in the insurance industry. Such a construction is offensive and without merit or legal support.

2. Comments from The National Association of Independent Insurers ("NAII"), suggest that violations of the proposed rule would not be actionable under Article 21.21, §16, because recovery under §16 is limited to the list of practices detailed in Article 21.21, §4. The Department disagrees, and believes this argument is without merit. In making this argument, it should be noted that the comment materially misquotes §16, leaving out the explicit language of §16 which provides that rules or regulations lawfully adopted by the Board under Article 21.21 are actionable under §16.

3. One commenter said the Department cannot adopt this rule under Article 21.21, because that article only applies to "knowing" or intentional violations. The Department disagrees. Article 21.21 defines "knowingly" and uses it in specific instances throughout the article. For example, Article 21. 21, §16(b)(2) permits a person to recover an additional amount of two times the actual damages if the defendant engaged in "knowing" conduct. Article 21. 21 makes no requirement that regulations adopted by the Board apply only to knowing conduct. In fact, Article 21.21, §13(a) states that the State Board of Insurance is authorized to promulgate and may promulgate and enforce reasonable rules and regulations and may order such provision as is necessary in the accomplishment of the purposes of the article. In addition, in its declaration of purpose, Article 21.21 §1(b) states that "this Article shall be liberally construed and applied to promote its underlying purposes as set forth in this section."

4. Farmers Insurance Group and a number of other commenters argued that the section is not appropriate because the legislature did not intend to provide a private cause of action for violations of Article 21.21-5. In addition, Farmers and others allege that the Board is attempting to expand the reach of Article 21.21-5 beyond its "limited" language in the proposed rule's definition of "the setting or use of rates or rating manuals." Such comments suggested that by not referring to declinations to insure, and by specifically mentioning non-renewal activities, Article 21.21-5 excludes underwriting activities by companies in determining whether to originally issue a policy. The Department disagrees with this position. It believes that the rule is consistent with the nature and purposes of Articles 21.21 and 21.21-5. The most recent legislative history relating to the grant of private rights of action for violations based upon Board rules under Article 21.21 is the rejection of an amendment offered to the 73rd Legislature by Farmers, which sought to eliminate all such private causes of action. The amendment was not included in either the engrossed version or the enrolled version of HB 1461 or any other bill passed by the

73rd legislature. The Department believes that illegal racial and other types of unwarranted discrimination are the kind of unfair trade practices which Article 21.21 seeks to prohibit. There are no facts known to the Department which suggest that this kind of illegal conduct should not be subject to all applicable remedies. Additionally, the expansion of Article 21.21-5 alleged by Farmers relies on a construction of Article 21.21-5 which would ignore common industry practices and the explicit language of the statute. While Farmers' comments criticize the proposed rule's definition of "the setting or use of rates or rating manuals," they do not themselves offer an explanation or definition of the term, which comes directly from Article 21.21-5. In the common distribution of rates and manuals to agents by companies, the agents will receive the "underwriting guidelines" which explain how they are to use the rates and manuals in applying the company's or group's rates to the public. Without the practical definition as proposed in the rule, there can be no assurance that the public will be protected from actual, discriminatory practices. The Department believes that the legislature intended to provide this protection. The legislative history clearly establishes the express intent of Article 21.21-5 to prohibit "red-lining." Application of underwriting criteria in the market determines whether an applicant is written and at what rate. These underwriting criteria must be examined to determine whether the provisions of Article 21.21-5 are satisfied. This section, by defining the "setting and use of rates and rating manuals" to include underwriting criteria and other practices, accomplishes this purpose in a manner consistent with the legislative intent and plain language of Article 21.21-5. To illustrate the types of practices and methods used by insurers or agents which would be subject to this rule as proposed, but would no doubt escape scrutiny under the Farmers' interpretation, the Department has reviewed certain components of a new underwriting "service" which the Insurance Services Office, Inc. (ISO) is proposing to offer in the state of Texas called GUS, or Geographic Underwriting System. According to information provided by the ISO, one of the underwriting tools available through GUS is the availability of so-called "crime statistics" which are, in reality, one or more crime "indices" apparently supplied to ISO by a company which has developed models to predict the level of crime in a specific neighborhood. The Department contacted the company which developed the indices to find out what kind of information goes into making the index, and learned that only demographic information goes into the model, not actual crime statistics. According to company representatives, certain crime statistics are used to test the model. While the company representative was willing to provide the Department with the general types of information used in the model, the actual model and weighting factors were not disclosed, and were claimed as proprietary information. Generally, this model forecasts crime based upon a total of 21 census variables about the people in the neighborhood in question which fall into three main categories:

(1) Census Income and Labor Characteristics, such as the median income and the travel time to work;

(2) Social Characteristics, such as the number of people who are married and how many have completed high school; and

(3) Housing Characteristics, such as the median housing value and the number of persons per room. It is the Department's understanding that data on ethnicity is not used in the formula. However, in the Department's opinion, this type of forecasting, when used by insurance companies to determine whether to write a risk, or renew a risk or re-rate a risk is of regulatory and public concern. Department concern is heightened by the realization that an "underwriting service" may be offered through an advisory organization to an unlimited number of companies or agents because the use of such criteria could become the standard in the marketplace, with a devastating impact on certain neighborhoods. Clearly, it would be offensive and prohibited to implement these types of potential rating characteristics in a rating manual, yet that is the practical effect of using demographic models for underwriting. The Department does not believe that the legislature would have the Department ignore such practices in the face of exponential growth in the capabilities of companies and agents to derive and use demographic data for underwriting. The Department believes that the broad-based proposed rule will be substantially more effective in setting a meaningful standard of conduct than either a list of permitted or prohibited practices which would be doomed to irrelevance in the dynamic field of data management for underwriting purposes.

5. Some commenters argued that the proposed regulation exceeds the statutory authority of the Board under Article 21.21 because it is not consistent with the defined methods of competition in Article 21.21, §4. Instead they urged that the proposal creates new requirements with respect to discrimination. Examples used include, first, that the proposal uses a standard of "like" hazard instead of the statutory standard in Article 21.21, §4(7) of "essentially the same hazard", and, second, that §4(7) only relates to "renewal, canceling, or limiting of coverage" while the proposal includes application to rates, use of rates, and manuals. The Department disagrees, and can discern no material difference between the meaning of the term "like" and the meaning of the term "essentially the same." The term "like" in its adjectival form as used in the proposal, means "possessing the same or almost the same characteristics; equivalent." (American Heritage Dictionary of the English Language, 1973 ed.) The Department believes that this terminology does not create an additional or new standard, not only for the straightforward reason of plain language and commonly understood meaning, but also because other provisions of the Insurance Code, including Article 5.09, utilize such terminology to refer to risks that are essentially the same. With respect to the matter of application of the rule to rates, use of rates and manuals, the Department points out that although Article 21.21 does not refer to such matters, Article 21.21-5 does. Both these statutes relate to precisely the same subject matter. They address precisely the same problem: unfair discrimination. The Department believes that the

proposed section is consistent with the shared nature and purposes found in Article 21.21 and in Article 21.21-5. For this reason the Department remains persuaded that achieving the objectives of each of these statutes is more effectively provided for by setting a meaningful standard of conduct rather than to attempt to provide a list of prohibitions.

6. Several commenters opposing the adoption of the rule attacked the statutory bases relied on by the Department in proposing the rule for adoption to the Board. However, the Texas Automobile Insurance Service Office ("TAISO") more generally criticized the statutory basis outlined in the proposed rule by asserting that the rule does not satisfy the requirements of §5(a)(3) of APTRA that the notice of the proposed rule must include "a statement of the statutory or other authority under which the rule is proposed to be promulgated, including a concise explanation of the particular statutory or other provisions under which the rule is proposed..." TAISO asserted that the "legislature did not intend for the Department to set out every statute under which the Department has any authority every time it proposes a rule, but instead intended for the specific authority for the particular rule to be set out." It goes on to say none of the statutes cited by the Department provide authority for the rule. TAISO submitted no case law or other authority for its assertion about the legislative intent behind the above quoted section of APTRA. Apparently, it believes that the Department ought to state one statutory basis for this and other rules proposed for adoption. The Department disagrees. It does not believe APTRA requires that the statutory basis for any rule must all be found in one or a small number of statutes. Many state agencies just like the Department of Insurance and the State Board of Insurance have broad statutory grants of power to adopt rules as well as specific rulemaking grants of power, many of which may overlap, either completely or partially. The Department believes that APTRA permits different parts of a proposed rule to have one or several statutory bases and believes it is a better practice to list all of the sources of rulemaking power in proposing a rule so that commenters, such as TAISO, may understand the Department's complete analysis of the basis for the rule and may criticize all or part of it. Such an exercise permits a full debate on the statutory basis of the proposed rule, just as APTRA envisions. The Department therefore disagrees with this comment of TAISO.

7. A number of commenters opposing the proposed rule argue that Article 1.04(b) which provides that the "State Board of Insurance shall determine ... rules as provided by law..." does not give the Board general rulemaking authority for the Department but instead requires the Board to find some other legal basis for any specific rulemaking. The Department disagrees. The Board has general rulemaking authority under Article 1.04(b). This general rulemaking authority of the Department was reaffirmed in floor debate on HB 1461. HB 1461 moves such general rulemaking authority on September 1, 1993, to the Commissioner, except for rulemaking relating to rates and forms which

was left to the Board until September 1, 1994. The general rulemaking authority was moved to the Insurance Code, Article 1.03A, and restated as follows: "The Commissioner may adopt rules and regulations for the conduct and execution of the duties and functions of the department only as authorized by a statute." In explaining an amendment to this provision to the Senate during debate on HB 1461, Senator Rodney Ellis stated that "the Department must have specific statutory jurisdiction to issue a rule, but each section of the Insurance Code in which the Department has jurisdiction need not explicitly reference the Department's rulemaking authority." Senator Carl Parker, the bill sponsor in the Senate, agreed, saying "I'm not trying to tie 'em to specific authority for a specific rule, they just need general authority for a specific rule, they just need general authority under a law to pass a rule in furtherance of that law..."

8. Several commenters opposed to the adoption of the rule asserted that the State Board of Insurance lacked authority to adopt this rule even if it abided by the time limits set out in Section 5 of Article 6252-13a, the Administrative Procedure and Texas Register Act ("APTRA"), because a few days after the Board was scheduled to consider adoption of the rule, its rulemaking authority would change pursuant to the provisions of House Bill 1461. Essentially these commenters said first, that the Board would lack the authority to pass the proposed rule on August 30, 1993, even if it abided by the time requirements of APTRA. Second, they said that even if the Board had the power to pass the proposed rule on August 30, because that satisfied the time requirements of APTRA, the Board's power nevertheless would be diminished to adopt the rule on that date, because its rulemaking authority would change two days later on September 1, 1993, under the provisions of House Bill 1461. The Department believes these comments are without merit, for the following reasons. First, the Board had full power to adopt the proposed rule on August 30, 1993 or August 31, 1993, under the time requirements of APTRA. Section 5 of APTRA sets forth the requirements for adoption of a rule by state agencies, including the Board. In Section 5(a), APTRA provides that prior to the adoption of any rule, "an agency shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the Texas Register." Further, Section 5(c), provides that prior to the adoption of any rule, an agency "shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The agency shall consider fully all written and oral submissions concerning the proposed rule." The Board satisfied the requirements of §5(a). The Board voted to publish the proposed rule for public comment on July 27, 1993, and the rule was published on July 20, 1993, in the *Texas Register* at 18 TexReg 4933. This has permitted the public more than 30 days to comment to the Board on the proposed rule. The Board also satis-

fied the requirement of §5(c) for a public hearing on the rule. The remaining requirements of §5(c) were met prior to adoption of the rule, affording all persons a reasonable opportunity to submit comments in writing or orally. All such persons had the opportunity to comment orally or in writing on the proposed rule since publication and as a result of the hearing on Docket Number 2043. All such submissions received prior to August 30 have been fully considered by the Department and the Board, and the Board fully considered all submissions made during the hearing prior to adoption of the proposed rule. The commenters have submitted no case law or other precedent construing APTRA's rulemaking provisions to show that an agency that satisfies the time requirements of APTRA, giving 30 days' notice for public commentary on a proposed rule, and otherwise fulfilling the requirements of §5 of APTRA, lacks authority under APTRA to adopt such rule. The Department therefore concludes that this comment has no merit. APTRA permitted the Board to adopt this rule following conclusion of the public hearing and consideration of all the comments. Second, the Department rejects the commenters' argument that the Board loses its current rulemaking authority prior to the date set by the Legislature in HB 1461 for a change in such rulemaking power. Essentially the commenters making this argument are saying that the Board's power to pass this rule is diminished prior to September 1, 1993, because it will change on September 1, 1993. Presumably the Legislature would have changed the rulemaking authority of the Board prior to September 1, 1993, had it wished to do so. There are certain sections of the Sunset Act that went into effect prior to September 1, 1993. Where the Legislature did not act to restrict the Board's rulemaking authority, the commenters wish the Board to do so. The commenters cite no court cases, legislative history, or other precedent for the argument that a Board whose rulemaking authority is to change, actually loses its prior rulemaking authority in advance of the date set by the Legislature. The Board concludes, therefore, that it retains full authority to pass the proposed rule, under §5 of APTRA, because it has satisfied the time, public hearing, comment, and other requirements of APTRA for adoption of a rule. Furthermore, the Board concludes that the change in the Board's rulemaking authority on September 1, 1993, under HB 1461 does not make prior exercise of the Board's current authority over rulemaking invalid.

9. Some commenters suggest that the term "like hazard" which appears in Article 5.09 and §21.7(b)(3) of the proposed rule is vague, undefined, and provides no standard for compliance by companies. One comment suggests that Article 5.09 is limited to the activity of charging rates to risks, not the "discrimination inherent in deciding whether or not to insure a risk." Some comments suggest that Article 5.09 applies only to auto insurance, and applies only to "insureds," and provides defenses which could apply to some alleged offenses. The Department does not agree with these comments. The Board has authority under Article 5.09 with respect to automobile insurance and under Article 21.21

for other lines. The "like" hazard terminology is taken from Article 5.09. Article 5.09 reflects the basic actuarial concept that persons should pay premiums which are commensurate with their loss exposure. Subjective underwriting and pricing strategies engaged in by companies which replace, in whole or in part, the analysis of the true hazard, or exposure which the person (or business) represents, is detrimental to the insurance system, in both the short term and the long term. More specific instances of potentially unfair distinctions in pricing which are unrelated to hazard would include the undisclosed underwriting and pricing authority granted by the same company to different agents based on that agent's profitability. It is certainly an undesirable result that an individual will receive a higher rate from one agent of company X than from another agent of company X just because one agent is having a bad year. These concerns were heightened by the comments of an insurance agent at the hearing who explained the term "limited underwriting authority" and how that practice harms consumers by limiting the ability to place them in lower-rated companies for reasons unrelated to their hazard. The Department would also point out that in the context of an agent who represents a group of companies, or numerous unaffiliated companies, the decision to offer a particular price in one company is, as a practical matter, made simultaneously with the decision not to insure in the other, lower or higher rated companies, based on underwriting criteria. To attempt to distinguish between these acts, as the commenters have, is an academic and artificial division. The Department believes, moreover, that legitimate differentiations based on risk will not be prohibited by this rule. Also, fair distinctions, if not based on risk, such as renewal discounts, will not be prohibited by this rule.

10. One commenter, in following up on the previous comment, questioned who would decide whether the hazard was a "like" hazard. The Department responds that classification plans and rating manuals used to rate any insurance consumer are the commonly used methods to determine the nature of a hazard.

11. Some commenters stated the section as proposed is too broad or too general and does not set forth specific standards. The Department responds that the rule is necessarily broad to encompass the variety of operations and practices in the insurance marketplace to which this rule is directed. For this reason, it is also necessary that the rule apply to all persons and entities doing the business of insurance in Texas. The section provides standards and defines the types of practices subject to the rule.

12. Some commenters argued that had the legislature intended Article 21.21-5 to be the subject of a private cause of action it could have been included as a defined unfair act under Article 21.21. But the legislature did not incorporate its prohibition into Article 21.21, nor did it provide for a private cause of action within the terms of Article 21.21-5 itself. These comments also urged that Article 21.21-5 can be enforced under Article 1.10 by the Department. Alternatively, some commenters concluded that the regulation is

unnecessary not only because of alternative means of enforcement but because the provisions themselves duplicate existing Texas statutes. One such comment inferred apparent duplication from the public benefit cost note, the last sentence of which indicates that there are not other anticipated economic costs because insurers are currently required to comply with existing statutes. The Department response to this series of comments is essentially the same. Specifically, that response is that the regulation is neither merely duplicative of Article 21.21-5 (or any other insurance statute related to discrimination necessarily), nor is it overreaching. It provides a mechanism that is an outgrowth of the legal substance found in Article 21.21-5. As such, it provides an appropriate and effective regulatory tool for administering and enforcing the provisions of Article 21.21-5, regardless of the availability of other helpful enforcement tools in the statutory/regulatory framework. The reason is that it provides insurers with more specific information about the means and the bases for scrutiny of prohibited discrimination.

13. Some commenters stated that Article 21.21-5, and provisions in the Insurance Code otherwise addressing the matter of discrimination, forbid the act of discriminating, not the effects of discrimination. Commenters urged that the purpose of the statutory scheme is to incorporate the concept of fairness into rates. By recognizing variations of hazard, it is possible to separate the appropriate differentiation that must occur on the basis of risk from invidious discrimination, which always has been unfair in Texas. They urged that the effects test is not contemplated in Article 21.21-5, and that because the effects test will have several unfortunate results, including restriction of the market, it should be eliminated from the rule. The Department disagrees with this commentary, and would point out that many if not most times, it is in or through the effect of discrimination that the actual act of unfair discrimination is discerned or capable of being discovered. It is thus by the means of the sound actuarial principles defense which is laid out in Article 21.21-5 and incorporated in the proposed regulation—that the distinction between unfair/prohibited discrimination and discrimination permitted by that law can be drawn. As many commenters have pointed out, Article 21.21-5 makes no distinction between intended discrimination and resulting discrimination. It simply prohibits discrimination, with exceptions as noted. By simply prohibiting discrimination, the law by practical logical evaluation includes in that prohibition the following: purposeful discrimination, intentional discrimination, and resulting (i.e., "effective") discrimination. Such a reading is consistent with federal law. Discriminatory effects have long been recognized as part of discrimination in federal law. These effects had been recognized for several years in the federal law prior to passage of Article 21.21-5 by the Legislature, which did not limit its provisions to intentional discrimination. Thus, the terms of the statute would extend to effective discrimination by necessary implication, as embraced in the proposal. The commenters provided no evidence of legislative intent that the effect of discrimination should be elimi-

nated from consideration, nor did the Department find any such evidence of legislative intent. It is the Department that is responsible for the administration and enforcement of the statute. Proper application of the purpose or effect standard is an effective and appropriate means of doing that.

14. A number of commenters to proposed 28 §21.7 directed comments to the language in subsection (c)(1)-(3), relating to the "purpose or effect" of discriminating. Those comments generally complained that the proposal significantly changes the standard by which unfair discrimination is to be determined by the addition of the phrase. Several commenters expressed concern that the proposal contains no definition of what "purpose or effect" means, and then variously concluded that as a result of such deficiency, the proposal is overly burdensome (presumably because of the uncertainty about what constitutes "effect"); vague and indefinite; confusing; incapable of being complied with; and likely to engender considerable litigation. Additional comments in followup to the above-stated conclusions focused on the idea that even if the proposal contained a definition of what "purpose or effect" means, it still would contain no defense to discrimination on the basis of race, color, religion, or national origin. Other commenters urged that no defense should be provided for discrimination based on race, color, religion or national origin. First, the Department recognizes the need for some further guidance in the rule. The adoption therefore includes a clarification change to subsection (c) to accommodate provisions in the Insurance Code that include the references to exceptions to penalties for discrimination. The Department also believes it appropriate to incorporate the interpretation of "effect of discrimination" under federal law by adding a new subsection (d) to the proposed regulation. New subsection (d) sets out the meaning of the term "effect of discriminating." The definition of "effect of discrimination" in the new subsection relies conceptually on disparate impact analysis of that term in federal Fair Housing Act cases under Title VIII. The definition is the result of a line of cases and corresponding legal principles which have developed at the federal level over the past several years. It states that "effect of discrimination" means any activity that actually or predictably results in discrimination. Second, the Department does not believe that a defense for the prohibition of discrimination based on race, color, religion, or national origin is appropriate. Though there were comments recommending such a defense, and though the Department staff had attempted to fashion a defense based on federal law, more compelling comments recommending against a defense resulted in the staff withdrawing recommended language. The following reasons support the "no defense" approach. First, and most fundamentally, the provisions in the Insurance Code, Article 21.21-5(b) indicate an absolute prohibition of discrimination with respect to the identified protected classes in of Article 21.21-5(b). Second, comments made in connection with this proposed section indicate that the legislative history for Article 21.21-5 does not indicate any intention for a defense to be granted with respect to such discrimination. In other words, that the

prohibition is a complete one. Third, in grappling with the provision of a defense, a number of other issues were raised, including but not limited to confusion about the nature of the defense, the burden of proof under the defense and whether or to what extent it would shift back and forth from complainant to defendant, and whether legitimate business purpose could be identified with sufficient precision to make the defense provisions of the section meaningful. For these reasons, the adopted section does not contain provisions for a defense from discriminatory acts that fall within the prohibition against discrimination based on race, color, religion or national origin.

15. A number of commenters directly or indirectly characterized the proposal as an attempt to address discriminatory pricing practices in the Texas insurance market without a justifiable basis. In doing so they argued that no conclusive evidence has been presented by the Department to demonstrate that such practices exist, and insist the only evidence presented by the Department is that there are societal problems that make insurance more costly in some areas compared to others. The Department disagrees with these characterizations and the conclusion that there is no justifiable basis for the rule. The validity of the proposal is based on factors exclusive of whether specific independent incidences of unfair discrimination have already been proven. The Department believes the proposal represents a legitimate and appropriate regulatory action in furtherance of the implementation and administration of a legislative directive. That substantive legislative mandate is clearly stated in Article 21.21-5. The proposal if adopted would provide the regulatory mechanism to achieve the objective, which has two primary strategies, one being a curtailment function, and the other being a deterrent function.

16. Some comments suggested that the Board does not have any factual bases for this rule, and urged that the initial presentation of the Department's consulting actuary was inconclusive on the subject. The Department disagrees with these comments for the following several reasons. The Board has received testimony in consideration of this section from interns working at the Department on practices affecting the availability and pricing of homeowners insurance in lower income, minority neighborhoods of Austin and Dallas. Homeowners and realtors complained to the interns of difficulty in securing such insurance and its high cost. The Board has received information about, and testimony from, agents regarding discriminatory effects of certain underwriting practices and limitations. The Board has received information indicating complaints have been filed and investigated regarding unfair trade practices. The Board has considered petitions requesting the Board to prohibit unfair practices in the insurance industry. In considering those petitions, the Board has received testimony relating to the types and effects of unfair trade practices utilized by insurers. The Board also has received testimony indicating that in the major urban areas of the state high numbers of drivers in the TAIP are statistically related to high numbers of renters and low housing

values. Neither of these factors appear to be related to the hazard covered by the TAIP. The Board has received testimony from its consulting actuary indicating that in Houston and the Dallas/Fort Worth area there are statistical relationships with high concentrations of minorities and there are indications of statistical relationships between the price and availability of homeowners insurance. The Department believes that this evidence presented to the Board, some statistical and some not, provides sufficient compelling evidence to support adoption of this section.

17. One commenter suggested that Texas should forego adoption of this proposal and instead work through the National Association of Insurance Commissioners' Urban Issues Subgroup, taking a leadership role to study and recommend solutions. The Department disagrees with this comment. While Texas has participated in the NAIC's Urban Issues Subgroup, it is not clear whether or when the NAIC will take action to address unfair discrimination and whether such solutions will be the best approach for Texas. Often Texas has taken different approaches to regulation, either not adopting, or substantially changing model laws and regulations developed by the NAIC. In addition, the NAIC disbanded the Urban Issues Subgroup at its last quarterly meeting and it is not clear how the NAIC will choose to proceed to address the issue in the future.

18. One commenter stated a county mutual does not have the defense to certain practices that other insurers might, specifically the use of an approved rating manual. The Department responds that Article 21.21-5, by its terms, applies to county mutual companies, and that such companies must be responsible for ensuring that their practices do not violate existing laws of this state.

19. One commenter suggested that the Board should proceed under the Insurance Code, Article 21.21, §5 and §6 prior to or in lieu of considering and adopting this section. The Department disagrees because Article 21.21 §§5, 6, and 7 provide for enforcement actions. Article 21.21, §13, on the other hand, provides an independent basis for consideration and adoption of rules in its specific grant of authority to the Board to promulgate reasonable rules and regulations.

20. One commenter suggested that the proposal represents a "take all comers" approach to underwriting because of the manner in which it is articulated. The Department disagrees with this conception of the proposal, and points out that the adoption includes new subsection (d), the purpose of which is to set out in detail the meaning of the term "effect of discriminating." The proposal as published and adopted includes in subsections (c)(2) and (3), provisions by which appropriate risk related factors are to be considered by insurers under the rule.

21. The Association of Fire and Casualty Companies in Texas ("AFACT") and the Texas Life Insurance Association ("TLIA"), commented that the "proposed rules are restricted to property and casualty insurance, yet the provisions of Article 21.21 and Article 21.21-5 apply to insurance other than or in addition to property-casualty insurance. Nei-

ther article mentions or defines what is meant by the term "property-casualty" insurance." The Department disagrees with this comment. Apparently, the thrust of this comment is that something is wrong with the proposed rule because it applies to property and casualty insurance and two of the statutes cited as authorizing the rule do not explicitly apply to "property-casualty" insurance, and do not define that term. The comment does not argue that both articles do not apply to property and casualty insurers, since both statutes clearly apply to all insurers engaging in the business of insurance in Texas, and thus both apply to property and casualty insurers engaging in such business in this state. Neither Article 21.21 nor Article 21.21-5 define the term "property-casualty" insurance. However, such lack of a definition creates no problem for the proposed rule. The term "property and casualty insurance" is commonly used and understood by the insurance industry in Texas, an understanding the Legislature could rely on in drafting statutes governing the business of insurance in this state. Since AFACT is a trade association of fire and casualty insurers, presumably the association understands not only what such term means, but also understands how the TDI and the Board, as well as the Texas courts, have construed that term over the years. The Department believes property insurance includes all insurance coverages of real or personal property and casualty insurance covers all other lines of insurance except for those lines of insurance providing coverage for life, accident, and health insurance. Casualty insurance includes automobile insurance, commercial property insurance, commercial casualty insurance, third-party liability insurance, workers' compensation insurance, boiler explosion insurance, plate glass insurance, burglary, robbery and theft insurance, credit insurance other than life and disability, title insurance, and all types of liability insurance, including insurance on manufacturing and construction operations, and sale and distribution of products. In conclusion, the Department sees no problem with the absence of a definition in the rule, because two of the statutes providing authority for the rule do not define but make it clear that their provisions apply to property and casualty insurers. The final adoption does not, therefore, include a definition for property and casualty insurance.

22. In a restatement of the previous comment, a commenter suggested that the section should define "casualty insurance," citing the fact that the term is given various definitions relating to particular types of entities in different parts of the Insurance Code. The Department disagrees for the following reasons. The Department believes it is not necessary to define the term "casualty insurance" even though in certain areas of the Insurance Code, that term is specifically defined. The Department points out, however, that those Insurance Code provisions utilize limited definitions of "casualty insurance" that are specifically designed to serve the limited purpose intended by the Legislature for the purposes of the particular statutes in which the definitions are found. For reasons stated here and in response to the previous comment, the adoption does not contain a definition of the term "casualty insurance."

23. Some commenters suggest that the rule may affect the availability and affordability of insurance and the ability to develop and market to niche markets might be adversely affected. One comment suggested that special arrangements with associations may be prohibited. The Department believes that marketing strategies would be unaffected by this rule unless they have a discriminatory effect based on race, color, religion, or national origin. The Department would further note that Article 21.21-5 provides the current standards, including the requirement for sound actuarial principles for age discrimination, applicable to special association arrangements, and this rule merely carries the existing standards forward.

24. Commenters suggested that the definition of "setting or use of rates or rating manuals" is so broad that it could encompass a wide variety of activities engaged in by an insurer. The Department agrees that the proposed definition of "the setting or use of rates or rating manuals" is broad. It is intended to include those activities used by an insurer to determine whether to insure or continue to insure an applicant and at what rate.

25. One company commented that the rule would restrict markets, that independent rating plan development would be chilled, and that this result is contrary to legislative intent and consumer demand for competitive markets. The Department disagrees with this comment. The commenter offers no factual basis for the assertion that markets will restrict upon the adoption of this rule. The Department believes to the contrary that markets will likely open for those consumers who have been denied insurance because of illegal practices which are subject to this rule. Moreover, the Department believes that the proposed rule is essential in the establishment of a truly competitive market which relies more upon scrutiny of unfair business practices and less upon inflexible pricing regulations.

26. One agent association commented that it was disturbed that agents were included in the application of the rule in the definition of "insurer" and suggested that agents be deleted from the definition. The Department responds that the definition of "insurer" in the section is designed to cover agents as well as insurers to assure that discriminatory practices are stopped wherever they occur in the business of insurance in Texas.

The new section is adopted pursuant to the Insurance Code, Articles 1.04(b), 5.09, 5.10, 5.81, 5.98, 21.07 §13, 21.07-3 §21, 21.14 21.21, 21.21-3, 21.21-5, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 1.04(b) authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. Article 5.09 prohibits any insurer coming within the terms of Chapter 5, Subchapter A, the Insurance Code, from permitting any discrimination or distinction in favor of an insured having a like hazard in the charge of premiums. Article 5.10 authorizes the State Board of Insurance to make and enforce rules and regulations necessary to carry out the provisions of the automobile insurance statutes. Article 5.81 authorizes the State Board of Insurance to

make, approve, and enforce rules and regulations necessary and desirable to carry out the purposes and objectives of regulating multi-peril policies of insurance. Article 5.98 authorizes the State Board of Insurance to adopt reasonable rules that are appropriate to accomplish the purposes of the Insurance Code, Chapter 5, which regulates property and casualty insurance. Article 21.07, §13, provides the State Board of Insurance with the authority to establish reasonable rules and regulations for the licensing of agents. Article 21.07-3, §21, provides the State Board of Insurance with the authority to establish reasonable rules and regulations for the licensing of managing general agents. Article 21.14 provides the State Board of Insurance with the authority to license local recording agents and solicitors. Article 21.21 authorizes the State Board of Insurance to promulgate reasonable rules and regulations to accomplish the purposes of Article 21.21, including the determination of practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and to prohibit such practices. Article 21.21-3 sets forth reasons for which an insured may not discriminate against an individual solely because of a handicap or partial handicap. Article 21.21-5 sets forth bases upon which an insurer may not discriminate. 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 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: Articles 5.09, 21.21, 21.21-3, and 21.21-5.

§21.7. Certain Practices in the Setting or Use of Rates or Rating Manuals for Property and Casualty Insurance Prohibited and Declared Unfair.

(a) Purpose. The purpose of this section is to prohibit certain practices or activities in the setting or use of rates or rating manuals by insurers writing property or casualty insurance.

(b) Definitions.

(1) "Insurer" means an insurance company or affiliated group of insurance companies or any person or entity doing the business of insurance as defined by Article 1.14-1, Insurance Code.

(2) "The setting or use of rates or rating manuals" includes, but is not limited to, any procedure, practice, method, underwriting guideline, or other activity used by an insurer to determine whether to insure or continue to insure an applicant and at what rate.

(c) Prohibited Insurer Activities. Unless the result of law or regulatory mandate, an insurer commits an unfair practice and a prohibited activity when its setting or use of rates or rating manuals for property or casualty insurance in this state:

(1) has the purpose or effect of discriminating on the basis of race, color, religion, or national origin;

(2) has the purpose or effect of discriminating on the basis of geographic location, age, sex, or disability, unless such discrimination is justified by sound actuarial principles; or

(3) has the purpose or effect of unfairly distinguishing or unfairly discriminating among insureds or potential insureds having a like hazard.

(d) Effect of Discriminating. An activity has the effect of discriminating when it actually or predictably results in discrimination.

(e) Provisions Are Cumulative. This section is cumulative of other provisions of the Insurance Code, other statutory and common laws, and rules adopted by the Texas Department of Insurance.

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

Issued in Austin, Texas, on September 8, 1993.

TRD-9328484

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

Effective date: September 29, 1993

Proposal publication date: July 27, 1993

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

◆ ◆ ◆
Title 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

◆ ◆ ◆
• 34 TAC §7.306

The Comptroller of Public Accounts adopts new §7.306, concerning video lottery games, without changes to the proposed text as published in the August 6, 1993, issue of the *Texas Register* (18 TexReg 5194).

The purpose of the new section is to prohibit the operation of games using a video lottery machine as required by the State Lottery Act, §2.02(k).

No comments were received regarding adoption of the new section.

The new section is adopted under the State Lottery Act, §2.02(k), which requires the comptroller to adopt such a rule and §2.02(b), which provides the comptroller with the au-

thority to adopt all rules necessary to administer the State Lottery Act.

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

Issued in Austin, Texas, on September 7, 1993.

TRD-9328392

Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public
Accounts

Effective date: September 28, 1993

Proposal publication date: August 6, 1993

For further information, please call: (512) 463-4026

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-Support Services

Employment Services

• 40 TAC §10.2306, §10.2311

The Texas Department of Human Services (DHS) adopts an amendment to §10.2306, concerning client participation requirements, and new §10.2311, concerning work experience, in its Family Self-Support Services chapter without changes to the proposed text as published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 5061).

The justification for the amendment and new section is to comply with the requirements stipulated in the Human Resources Code, §31.0125, as added by legislation passed during the 73rd Regular Session of the Texas Legislature (House Bill 779) relating to the Community Work Experience Program. The amendment to §10.2306 adds to the client participation requirement a reference to 45 Code of Federal Regulations, §250.45(d). Section 250.45(d) specifies community work experience or an approved alternate work experience component as an optional component to include in the state's Job Opportunities and Basic Skills (JOBS) plan. The department's JOBS State Plan includes unpaid work experience as an approved alternate work experience component for JOBS participants. New §10.2311 defines the department's unpaid work experience provisions, the criteria for determining the appropriateness of unpaid work experience for individual JOBS participants, requirements for agencies and organizations that provide work experience opportunities for participants, and criteria for evaluating individual participants who complete an unsuccessful job search period to determine their requirements to participate in unpaid work experience.

The amendment and new section will function by increasing opportunities for Aid to Families with Dependent Children (AFDC) recipients

participating in the JOBS program to obtain work skills and experience to enable them to be more successful in the local labor market.

No comments regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance and financial 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 September 7, 1993.

TRD-9328411

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

Effective date: October 1, 1993

Proposal publication date: August 3, 1993

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

◆ ◆ ◆
**Part X. Texas
Employment Commission
Chapter 303. Child Labor**

• 40 TAC §§303.4-303.6

The Texas Employment Commission adopts amendments to §§303.4-303.6, concerning child labor, without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4943).

The amendments clarify existing policy in anticipation of enforcement activity pursuant to amendments to Texas Civil Statutes, Article 5181.1.

The rules will make clear that federal regulations adopted by reference apply to all minors who are subject to the Commission's jurisdiction under the state statute.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 5181.1, which provide the Texas Employment Commission with the authority to adopt rules necessary to promote the purpose of the Act.

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

Issued in Austin, Texas, on September 3, 1993.

TRD-9328383

J. Ferris Duhon
Legal Counsel
Texas Employment
Commission

Effective date: September 24, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 463-2291

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 Commission on Alcohol and Drug Abuse

Monday, September 20, 1993, 10:00 a.m. The Offender Credentialing Committee of the Texas Commission on Alcohol and Drug Abuse will meet at 710 Brazos Street, Austin. According to the complete agenda, the committee will call the meeting to order; review applications for the Licensed Chemical Dependency Counselor; and adjourn.

Contact: Mike Ezzell, 710 Brazos Street, Austin, Texas 78701, (512) 867-8110.

Filed: September 9, 1993, 9:47 a.m.

TRD-9328560

Monday, September 20, 1993, 5:00 p.m. The Offender Credentialing Committee of the Texas Commission on Alcohol and Drug Abuse will meet at 710 Brazos Street, Austin. According to the complete agenda, the committee will call the meeting to order; conduct informal hearing regarding licensure as a Licensed Chemical Dependency Counselor; and adjourn.

Contact: Mike Ezzell, 710 Brazos Street, Austin, Texas 78701, (512) 867-8110.

Filed: September 9, 1993, 9:47 a.m.

TRD-9328559

Monday, September 21, 1993, 8:30 a.m. The Board of Commissioners of the Texas Commission on Alcohol and Drug Abuse will meet at 710 Brazos Street, Perry Brooks Building, Commission Meeting Room, Eighth Floor, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of the June 22, 1993, minutes; hear report on implementation of Criminal Justice In-Prison Therapeutic Community Program (ITC); report on Criminal Justice Substance

Abuse Felony Punishment Facility Program (SAFP); report on Criminal Justice Continuum of Care (TTC); report on Treatment Alternatives to Incarceration Program (TAIP); selection of board vice-chair and secretary and appointment of committee members; action by consent: approval of fiscal year 1994 operations budget, adoption of proposed amendments to Drug Offender Education Program rules, adoption of proposed amendments to DWI Education Program rules; adoption of proposed amendments to DWI Repeat Offender Program rules; adoption of proposed amendments to Alcohol Awareness Program rules; adoption of proposed changes to Counselor Licensure rules; presentation of special recognition award; in-depth review of agency response to the State Audit Office management report; hear public comments on Crime Prevention Institute; meet in executive session to discuss pending litigation and employment matter relating to the executive director's position; reconvene to hear executive director's report on legislative update; chairman's report; and adjourn.

Contact: Becky Davis or David P. Tatum, 710 Brazos Street, Austin, Texas 78701, (512) 867-8700.

Filed: September 9, 1993, 9:47 a.m.

TRD-9328558

Texas Bond Review Board

Tuesday, September 14, 1993, 10:00 a.m. The Staff Planning of the Texas Bond Review Board will meet in the Committee Room Five, Fifth Floor, Clements Building, 300 West 15th Street, Austin. According to the emergency revised agenda summary, the staff will discuss Texas A&M University System revenue financing system bonds and

amendment of master resolution. The emergency status is necessary to allow timely consideration of application for proposed issue. Application was timely filed, but prior notice was not received before notice of open meeting was posted.

Contact: Jim Thomassen, 300 West 15th Street, Clements Building, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: September 7, 1993, 3:24 p.m.

TRD-9328432

Texas Department of Criminal Justice

Wednesday, September 15, 1993, 1:00 p.m. The Subcommittee on Substance Abuse of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 B. Padre Boulevard, South Padre Island. According to the agenda summary, there will be a joint meeting with the Criminal Justice Issues Committee of Texas Commission on Alcohol and Drug Abuse. The subcommittee will call the meeting to order; discuss approval of minutes; update from Community Justice Assistance Division; discuss client selection process; status report on facility construction/renovations; update on in-prison therapeutic communities; substance abuse felony punishment facilities; after-care; outpatient program; counselor licensure plan; prior pending business; new business; and adjourn.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 7, 1993, 4:04 p.m.

TRD-9328440

Wednesday, September 15, 1993, 3:00 p.m. The Subcommittee of Parole Division of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the agenda summary, the subcommittee will discuss interim management update; parole trends; discuss and possibly act on warrants division; and Lockhart Work-Release Facility.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 7, 1993, 4:03 p.m.

TRD-9328439

Wednesday, September 15, 1993, 4:00 p.m. The Subcommittee on Community Justice Assistance Division of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the complete agenda, the subcommittee will review and discuss Travis County Community Justice Pilot Project-presentation by Ronnie Earle, Travis County District Attorney; discuss and possibly act on grant distribution; state jail facilities; and other business.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 7, 1993, 4:03 p.m.

TRD-9328438

Thursday, September 16, 1993, 9:00 a.m. The Subcommittee on Windham School System of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the complete agenda, the subcommittee will discuss tuberculosis control policy; revision to appraisal policy; discuss and update of the WSS performance review; and SHSU recidivism study.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 8, 1993, 2:12 p.m.

TRD-9328512

Thursday, September 16, 1993, 9:30 a.m. The Subcommittee on Finance and Audit of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the complete agenda, the subcommittee will discuss fiscal year 1994 operating budget; resolution relating to financing; secure correctional facilities, Venus, Lockhart, Overton, and Diboll.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 8, 1993, 2:12 p.m.

TRD-9328511

Thursday, September 16, 1993, 11:30 a.m. The Subcommittee on Construction of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the agenda summary, the subcommittee will discuss current project status: 2,250 man units, 1,000 man units, psychiatric units, Alberti units, substance abuse treatment facilities; discussion of Sprung structures-500 SATF and building annexes; discussion of owner controlled insurance programs; discussion and possible action concerning changes to departmental rules for determining prevailing wage rates required by amendment to Prevailing Wage Act, (Texas Civil Statutes, Article 51590); discussion of Pampa proposal; review of construction projects for board approval; current request for proposals; program update; and other items.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 8, 1993, 4:27 p.m.

TRD-9328549

Thursday, September 16, 1993, 1:00 p.m. The Subcommittee on Minority Relations of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the complete agenda, the subcommittee will discuss promotion and hiring procedures; institutional division; parole division; agency purchasing procedures; construction and architect/engineer selection procedures; and other items.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 8, 1993, 4:27 p.m.

TRD-9328548

Thursday, September 16, 1993, 3:00 p.m. The Subcommittee on County Relations of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the complete agenda, the subcommittee will discuss and possibly act on state jail division.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 8, 1993, 2:12 p.m.

TRD-9328510

Thursday, September 16, 1993, 3:30 p.m. The Board of Criminal Justice of the Texas Department of Criminal Justice will meet at the Sheraton Hotel, 310 South Padre Boulevard, South Padre Island. According to the agenda summary, the board will call the meeting to order; convene Texas Board of Criminal Justice; meet in executive session to discuss with board attorneys concerning agency litigation; other matters made confidential under State Bar Code of professional responsibility; and discussion concerning the following positions; executive director, general counsel, and pardons and paroles director.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: September 8, 1993, 2:11 p.m.

TRD-9328509

The Daughters of the Republic of Texas, Inc.

Friday, September 17, 1993, 8:45 a.m. The Board of Management of the Daughters of the Republic of Texas, Inc. will meet at the Wilson World Hotel, 4600 West Airport Freeway, Irving. According to the complete agenda, the board will call the meeting to order; determine quorum; hear reports and recommendations for action by committees operating state owned properties: Alamo Committee; French Legation Committee; DRT Library Committee (building); others; meet in executive session; determine quorum; discuss matters affecting state owned properties pursuant to Article 6252-17, §2(e), (f), (g), and (j) if necessary; reconvene in open meeting; discuss motions arising from executive session; hear public comment; recess to private business meeting; and adjourn.

Contact: Gail Loving Barnes, 2922 Chisum, Odessa, Texas 79762, (915) 366-7085.

Filed: September 7, 1993, 1:38 p.m.

TRD-9328418

Texas State Board of Dental Examiners

Thursday, September 16, 1993, 8:00 a.m. The Texas State Board of Dental Examiners will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, San Antonio Room, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; discuss approval of: past minutes; sedation/anesthesia permits; settlement orders; consider and possibly discuss proposal for decision of Troy Simmons versus TSBDE #504-93-218; modification of board orders-Cunningham, Redus; appearance be-

fore the Board-Roberts, Murry, Fourment, Radko, Toosi, Riddel, Hill; discussion of anesthesia committee appointments; dental laboratory certification council appointment; appointments of specialty advisory committee (periodontics, oral pathology, and public health); new proposed rules-dental laboratory; Senate Bill 933 and proposed rules; amendment to examination rules in Chapter 101, Chapter 103-WREB exam criteria; discussion and signing of WREB contract; public hearing and final adoption of Rule 101.7 amendment; discussion of proposed rule change and/or prescription of application form-jurisprudence; and hear reports: president's report; committee reports; and admin/exam/enforcement/credentialing.

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower 3, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: September 8, 1993, 4:29 p.m.

TRD-9328551

Friday, September 17, 1993, 8:00 a.m. The Texas State Board of Dental Examiners will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, San Antonio Room, Austin. According to the complete agenda, the board will have appearances before the board-applicants for licensure by credentials; hear announcements; and adjourn.

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower 3, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: September 8, 1993, 4:29 p.m.

TRD-9328550

Employees Retirement System of Texas

Wednesday-Thursday, September 15-16, 1993, 1:30 p.m. and 9:00 a.m. respectively. The Board of Trustees of the Employees Retirement System of Texas will meet at the Texas Rehabilitation Commission Building, 4900 North Lamar Boulevard, Room 4501, Austin. According to the complete agenda, the board will give a briefing on ERS administered programs; set date of next trustee meeting; and adjourn.

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867-3336.

Filed: September 7, 1993, 10:26 a.m.

TRD-9328412

Texas Department of Health

Wednesday, September 15, 1993, 10:00 a.m. The Children's Speech, Hearing and Language Screening Advisory Committee of the Texas Department of Health will hold

an emergency meeting at the Texas Department of Health, Room G-107, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: subcommittee reports covering speech/language and hearing; hear ad hoc committee reports; program reports including speech/language screening, program amplification for Children of Texas/Audiology, hearing screening and audiometrics lab; pilot program for use of insert earphones for hearing screening; and hear public comment. The emergency status is necessary due to unforeseeable circumstances.

Contact: Doug Ozias, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7420. 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: September 8, 1993, 4:25 p.m.

TRD-9328540

Wednesday, September 15, 1993, 4:00 p.m. The Family Planning Interagency Advisory Council Ad Hoc Medical Subcommittee of the Texas Department of Health will hold an emergency meeting at the Texas Department of Health, Room M-653, 1100 West 49th Street, Austin. The subcommittee will discuss and possibly act on: folic acid trial update; female condom; status reports of nurse practitioners training contract, and Title XIX extended Medicaid coverage post partum; state contracts regarding pharmaceuticals/lab tests; and old and new business not requiring action. The emergency status is necessary due to unforeseeable circumstances.

Contact: Patti Patterson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 8, 1993, 4:26 p.m.

TRD-9328541

Thursday, September 16, 1993, 9:00 a.m. The Family Planning Interagency Advisory Council of the Texas Department of Health will meet at the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin. According to the complete agenda, the council will discuss approval of the minutes of previous meeting; discuss and possibly act on: Department of Human Services transition to Texas Department of Health status report; allocation of work group report (fiscal year 1994 Title XX contracts); coordinated care project; Adolescent Pregnancy Parenthood Advisory Council report; advisory council structure/composition/name; ad hoc medical subcommittee report; advisory committee report; program updates; advisory council evaluation

survey results; and old and/or new business not requiring advisory council action.

Contact: Patti Patterson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 8, 1993, 4:26 p.m.

TRD-9328542

Texas Department of Human Services

Friday, September 17, 1993, 11:00 a.m. The Texas Board of Human Services of the Texas Department of Human Services will meet at 701 West 51st Street, Public Hearing Room, Austin. According to the complete agenda, the board will consider approval of the minutes of August 6, 1993, meeting; chairman's comments and announcement; changes to LTC/NFR for licensure and medicaid certification; nursing facility requirements regarding oxygen reimbursement; experimental class; incorporation of Hepatitis B inoculation costs into the per dim rates for ICF-MR and nursing facility programs; licensure regulations regarding nurse aide training; nursing facility waiver rules changes; report of annual costs necessary to implement the nursing facility waiver; CLASS reimbursement unit rates and administrative expense fee; report on annual costs necessary to add health-related tasks as eligible benefits in the primary home care program; criminal history checks rules on applicants for employment in certain industries that contract with DHS; mandatory participation in SFSP; modification to eligibility criteria for CACFP day care home sponsors; non-cooperation with child support requirements for recipients in AFDC and medical programs; amendments to policies and procedures; fiscal year 1993-1994 budget adjustments; advisory committee rules; and commissioner's report.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3048.

Filed: September 8, 1993, 1:38 p.m.

TRD-9328499

Texas Incentive and Productivity Commission

Wednesday, September 22, 1993, 10:00 a.m. The Texas Incentive and Productivity Commission will meet at the Clements Building, Fifth Floor, Committee Room One, 15th and Lavaca Streets, Austin. According to the agenda summary, the com-

mission will call the meeting to order; take roll call of members; discuss approval of the minutes of previous meeting; consider employee suggestions for approval; 1993 agency applications for Productivity Bonus Program awards; approval of proposed revisions to the PBP rules for publication and public comment; consider 1994 operating budget approval; hear report on administrative matters; and adjourn.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: September 9, 1993, 9:46 a.m.

TRD-9328556

Texas Department of Insurance

Wednesday, September 15, 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; solvency; hear commissioner's orders; staff reports; legislative implementation; and the granting of a meeting or a hearing on form filings made by the Office of the Secretary of State requesting approval of new surety bond forms entitled "Veterans Organization Solicitation Bond", "Veterans Organization Solicitor's Bond", "Public Safety Organization, Independent Promoter or Public Safety Publication Bond", "Telephone Solicitation Bond", and "Third Party Debt Collector Bond" pursuant to the Texas Insurance Code, Articles 5.13, 5.15, and 5.97.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 7, 1993, 11:56 a.m.

TRD-9328414

Commission on Jail Standards

Monday, September 20, 1993, 1:30 p.m. The Internal Audit Committee of the Commission on Jail Standards will meet at the John H. Reagan Building, Room 101, Congress Avenue and West 15th Street, Austin. According to the complete agenda, the committee will call the meeting to order; receive internal audit report; discussion and recommendation; and adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: September 7, 1993, 3:28 p.m.

TRD-9328434

Monday, September 20, 1993, 2:00 p.m. The Commission on Jail Standards will

meet at the John H. Reagan Building, Room 101, Congress Avenue and West 15th Street, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call of members; announcements of appointments; reading and approval of minutes; administrative action: old business: status of transfer of felony backlog; payment to counties; status of state jail facilities; American Disabilities Act update; status of TB screening; internal audit report; completed jail projects; jail population report; active remedial orders; change to standards; new business: review of commission procedures; staff briefing on compliance and enforcement; inmate request for assistance; changes to standards; hear director's report; and meet in executive session.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: September 7, 1993, 3:28 p.m.

TRD-9328435

Tuesday, September 21, 1993, 9:00 a.m. The Commission on Jail Standards will meet at the Stephen F. Austin Building, Room 118, Congress Avenue and West 15th Street, Austin. According to the agenda summary, the commission will call the meeting to order; take roll call of members; discuss compliance and enforcement; old business: Bexar County, Kerr County, McLennan County, Orange County, Wharton County; new business: Chambers County, Denton County, Runnels County, Travis County; applications for variances: Denton County, Galveston County, Harris County, Jefferson County, Kerr County, Rockwall County, Runnels County, Tarrant County, Taylor County, Travis County; discuss other business; and adjourn.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: September 7, 1993, 3:27 p.m.

TRD-9328433

Texas Juvenile Probation Commission

Thursday, September 16, 1993, 2:00 p.m. The TJPC/TEA Joint Committees of the Texas Juvenile Probation Commission will meet at 2015 South IH-35, Austin. According to the complete agenda, the committees will call the meeting to order; discuss joint task force meeting procedures; review of State Board of Education/Texas Juvenile Probation Commission initiatives; discuss agencies' initiatives-Texas Juvenile Probation Legislative update; Texas Juvenile Probation Commission initiatives for 1993-1994; TEA legislative update and school violence prevention activities; discuss other related interagency initiatives;

issue papers-infrastructure; truancy education in detention centers; clustered alternative schools; follow-up actions; and adjourn.

Contact: Bernard Licarione, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: September 7, 1993, 3:30 p.m.

TRD-9328436

Thursday, September 16, 1993, 6:00 p.m. The Internal Audit Committee of the Texas Juvenile Probation Commission will meet at 2015 South IH-35, Austin. According to the complete agenda, the committee will call the meeting to order; hear internal audit committee report-internal audit on program services; internal audit on challenge grants; renewal of internal audit contract; and adjourn.

Contact: Bernard Licarione, 2015 South IH-35, Austin, Texas 78711, (512) 443-2001.

Filed: September 8, 1993, 4:26 p.m.

TRD-9328546

Friday, September 17, 1993, 8:30 a.m. The Board of the Texas Juvenile Probation Commission will meet at 2015 South IH-35, Austin. According to the complete agenda, the committee will review and discuss excused absences; approval of June 11, 1993, board meeting minutes; introduction of new employees; hear internal audit committee report-program services, challenge grants; budget report-report on fiscal year 1993 performance targets, revised fiscal year 1993 administrative budget; appointments to the Texas Advisory Council on Juvenile Services; community corrections evaluation preliminary report; unit cost for probation services in small departments; report on the commission on children and youth; state auditor's report on juvenile justice; TJPC/State Board of Education Joint Board Committee report; 73rd Legislative sessions statutory changes; director's report-state aid and community corrections contract; report on TJPC's innovative and creative grant program; proposed guidelines for waiver of standards; hear public testimony; schedule next meeting; discuss juvenile justice system; and adjourn.

Contact: Bernard Licarione, 2015 South IH-35, Austin, Texas 78741, (512) 443-2001.

Filed: September 8, 1993, 4:27 p.m.

TRD-9328547

Texas Department of Licensing and Regulation

Monday, September 20, 1993, 10:00 a.m. The Policies and Standards Division of the

Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Austin. According to the complete agenda, the division will hear public comments on the proposal to adopt the following rules: Chapter 60-Texas Commission of Licensing and Regulation; Chapter 70-Industrialized Housing and Buildings; Chapter 78-Talent Agencies; Chapter 75-Air Conditioning and Refrigeration Contractor License Law, and Chapter 69-Manufactured Housing.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: September 8, 1993, 12:41 p.m.

TRD-9328495

Wednesday, September 22, 1993, 10:00 a.m. The Air Conditioning and Refrigeration Contractors Advisory Board of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Austin. According to the agenda summary, the board will review and discuss: licensing and examinations; enforcement; examinations; Article 5.43-2, Insurance Code and Fire Alarm rules; new rule proposed by the Boiler Board; rewording of rule 75.100(c)(2) to agree with the State Board of Plumbing Examiners Rule change; proposed new rule on insurance; and proposed rules for board regarding Senate Bill 383.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: September 8, 1993, 12:41 p.m.

TRD-9328496

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Texas State Board of Medical Examiners

Friday, September 24, 1993, 9:00 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the division will discuss probation appearances and termination requests. Executive session under authority of Article 6252-17, as related to Articles 4495b, 2.07(b), 3.05(d), 4.05(d), 5.06(s)(1) and Opinion Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 202

Filed: September 8, 1993, 12:41 p.m.

TRD-9328494

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Texas Natural Resource Conservation Commission

Thursday, September 16, 1993, 9:30 a.m. The Water Well Drillers Advisory Council of the Texas Natural Resource Conservation Commission will meet at the John H. Reagan Building, Room 106, 105 West 15th Street, Austin. According to the agenda summary, the council will discuss and take action on the following: consider approval of the minutes of July 29, 1993, meeting; elect officers for fiscal year 1994; consider whether to set the following complaints for a formal hearing or appropriate legal action: Sandy Albu, City of Dell City, Mir Azizi, Rodney Broussard, Jimmy Don Carr, Bill Corbello, Roy Culbertson, Tim Davison, John E. Fitzgerald, J. W. Greak, Jr., Randal Johnson, John Murchison, Danny Murchison, Robinson Water Well, A. R. Roggenkamp, Alan Rutherford, and Patrick Shing; consider certification of applicants for registration; applications for driller-trainee registration; Rolf Woods' request to address the Council to ask for exception for requiring a drillers license on hydraulic electric or hand driven sampling tools; and consider staff reports.

Contact: Kathy Keils, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: September 8, 1993, 2:29 p.m.

TRD-9328516

Friday, September 17, 1993, 8:30 a.m. The Texas Natural Resource Conservation Commission will meet at 12118 North IH 35, Building E, Room 201 South, Austin. According to the agenda summary, the commission will meet in policy agenda and consider the following actions: impact on petroleum storage tank fund of clean-up levels; regulatory issues relating to management, including recycling of petroleum-contaminated media, petroleum wastewaters and gas-water mixtures; regulatory issues related to Chapter 334, Subchapter K; briefing to encourage private actions that further the purposes of the Federal endangered Species Act; presentation and discussion of various issues by environmental groups or individuals concerned about the protection of the environment.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: September 9, 1993, 9:47 a.m.

TRD-9328561

Monday, September 20, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Natural Resource Conservation 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 hearing on El Oso Water Supply Corporation's request filed against the City of Karnes City

for a cease and desist order. El Oso WSC is alleging that Karnes City is extending retail water service within El Oso WSC's certificated service area in Karnes County. Docket Number 30158-D.

Contact: Deborah Thomas, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: September 8, 1993, 9:02 a.m.

TRD-9328471

Thursday, September 23, 1993, 9:00 a.m. The Texas Natural Resource Conservation Commission will meet at the Amarillo Civic Center, North Concourse, Third and Buchanan Streets, Amarillo. According to the agenda summary, the U. S. Department of Energy-Pantex Plant, Amarillo area office has filed an application with the Texas Natural Resource Conservation Commission (formerly Texas Water Commission) for a Class 3 Permit Modification to hazardous waste Permit Number HW50284. The Pantex Plant is 17 miles northeast of Amarillo, north of U. S. Highway 60 and contiguous to the west side of State Highway 2373 in Carson County.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 8, 1993, 9:02 a.m.

TRD-9328469

Wednesday, October 27, 1993, 9:00 a.m. The Texas Natural Resource Conservation 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 hearing on a petition for creation of Harris County Municipal Utility District Number 360. The proposed district would contain two separate tracts (separated by Little Cypress Creek) totaling approximately 774,000 acres of land in northwest Harris County, approximately 25 miles northwest of downtown Houston, and four miles north of U.S. 290 along the east side of Huffmeister Road.

Contact: Randy Nelson, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-6161.

Filed: September 7, 1993, 4:39 p.m.

TRD-9328462

Wednesday, October 27, 1993, 9:00 a.m. The Texas Natural Resource Conservation 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 hearing on renewal of adoption of non-uniform standby fees for Northwest Harris County Municipal Utility District Number 24.

Contact: Ken Heroy, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-6161.

Filed: September 8, 1993, 9:02 a.m.

TRD-9328470

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**Board of Vocational Nurse
Examiners**

Monday-Tuesday, September 13-14, 1993, 8:00 a.m. The Board of Vocational Nurse Examiners will meet at the Ramada Inn Airport (Frontier Room), 5600 North IH-35, Austin. According to the emergency revised agenda summary, the board will hear education report; program actions; and board action required of Odessa College-Odessa. The emergency status is necessary as board approval of enrollment increase must be obtained immediately.

Contact: Marjorie A. Bronk, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

Filed: September 7, 1993, 1:33 p.m.

TRD-9328416

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**Public Utility Commission of
Texas**

Tuesday, September 14, 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 commission considered the Motion to Strike the Requirement that the OPC be allowed to participate in the IRS Letter Ruling Request in Docket Numbers 10200 and 10034-application of Texas-New Mexico Power Company for authority to change rates; Project Number 11852-Project-report on IRS Letter Ruling in connection with Docket Numbers 10200 and 10034. The emergency status was necessary as prompt commission action was necessary to preserve jurisdiction over the subject matter of the motion.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1993, 10:38 a.m.

TRD-9328486

Tuesday, September 14, 1993, 9:00 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete emergency revised agenda, the commissioners will elect a chairman pursuant to §5 of the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (Vernon Supplement 1993). The emergency status is necessary as action was required at this meeting pursuant to §5 of the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (Vernon Supplement 1993).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1993, 10:38 a.m.

TRD-9328487

Tuesday, September 14, 1993, 9:00 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete emergency revised agenda, the commissioners will consider the Motion to Strike the Requirement that the OPC be allowed to participate in the IRS Letter Ruling Request in Docket Numbers 10200 and 10034-application of Texas-New Mexico Power Company for authority to change rates; Project Number 11852-Project-Report on IRS Letter Ruling in connection with Docket Numbers 10200 and 10034. The emergency status is necessary to preserve jurisdiction over the subject matter of the motion.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1993, 10:38 a.m.

TRD-9328488

Tuesday, September 14, 1993, 9:00 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete emergency revised agenda, the commissioners will elect a chairman pursuant to §5 of the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (Vernon Supplement 1993). The emergency status is necessary as action is required at this meeting pursuant to §5 of the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (Vernon Supplement 1993).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1993, 10:38 a.m.

TRD-9328489

Monday, October 25, 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 complete agenda, the division will hold a hearing on the merits in Docket Number 12233-application of Harmon Electric Association, Inc. for reciprocity rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1993, 4:26 p.m.

TRD-9328545

Wednesday, October 27, 1993, 10:00 a.m. (Rescheduled from October 12, 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 complete agenda, the division will hold a prehearing conference in Docket Number 11336-General Counsel's inquiry into the reasonableness of the rates, terms, and conditions of Southwestern Bell Telephone Company's central office-based PBX-Type services for which flexible pricing is permitted.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 7, 1993, 4:35 p.m.

TRD-9328461

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**Texas State Soil and Water
Conservation Board**

Wednesday, September 15, 1993, 8:00 a.m. The Texas State Soil and Water Conservation Board will meet at 311 North Fifth Street, Conference Room, Temple. According to the complete agenda, the board will review and take appropriate action on the following: minutes from the August 23, 1993 board meeting; district director appointments; subdivision boundary changes for Highland SWCD #210; division and reorganization of Little Wichita SWCD #532; public information/education report; annual state meeting of Soil and Water Conservation District Directors; 1993 expenditure report for 12-month period ending August 31, 1993; uniform statewide accounting system; board member travel; Family Medical Leave Act; report of implementation of Senate Bill 503; publication of rules for Senate Bill 503; memorandum of agreement with Texas Natural Resource Conservation Commission; nonpoint source status report; priority watersheds for nonpoint source management; coastal zone management program; reauthorization of Clean Water Act; consider sites for regional offices; implementation of Senate Bill 502; reports from agencies and guests; and next regular board meeting, November 17, 1993.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, TEX-AN 820-1250.

Filed: September 7, 1993, 3:48 p.m.

TRD-9328437

Wednesday, September 15, 1993, 8:00 a.m. The Texas State Soil and Water Conservation Board will meet at 311 North Fifth Street, Conference Room, Temple. According to the complete emergency revised agenda, the board will consider and take appropriate action on 1995 National Watershed Conference. The emergency status is necessary as the board is not scheduled to meet again until November 17, 1993.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, TEX-AN 820-1250.

Filed: September 8, 1993, 4:26 p.m.

TRD-9328544

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**State Board of Examiners
for Speech-Language Pa-
thology and Audiology**

Friday, September 17, 1993, 9:00 a.m. The State Board of Examiners for Speech-Language Pathology and Audiology will meet at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the agenda summary, the committee will discuss approval of the minutes of the June 18, 1993, meeting; discuss and possibly act on: the standing subcommittees (complaints; rule changes; fees/budget; public relations; continuing education; application-renewals; agenda/meeting arrangements; correspondence; related standards/regulations; legislative review; exemptions to Act); Ad Hoc Subcommittees (supportive personnel guidelines; role of supervisor; ethics; Sunset review; scope of practice); executive secretary's report; election of officers; and other matters relating to licensing and regulation of speech-language pathologists and audiologists not requiring committee action.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. 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: September 8, 1993, 4:26 p.m.

TRD-9328543

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**Texas Guaranteed Student
Loan Corporation**

Wednesday, September 15, 1993, 4:00 p.m. The Finance Committee of the Texas Guaranteed Student Loan Corporation will meet at 12015 Park 35 Circle, Suite 300, Austin. According to the agenda summary, the committee will discuss approval of minutes of September 1, 1993; meet in executive session for management salary review presentation; and adjourn.

Contact: Peggy Irby, 12015 Park 35 Circle, Suite 300, Austin, Texas 78754, (512) 835-1900.

Filed: September 7, 1993, 4:15 p.m.

TRD-9328445

Thursday, September 16, 1993, 8:30 a.m. The Executive Committee of the Texas Guaranteed Student Loan Corporation will

meet at 12015 Park 35 Circle, Suite 300, Austin. According to the agenda summary, the committee will discuss approval of the minutes of June 29, 1993; nomination of officers for fiscal year 1994; and adjourn.

Contact: Peggy Irby, 12015 Park 35 Circle, Suite 300, Austin, Texas 78754, (512) 835-1900.

Filed: September 8, 1993, 4:20 p.m.

TRD-9328538

Thursday, September 16, 1993, 9:00 a.m. The Board of Directors of the Texas Guaranteed Student Loan Corporation will meet at 12015 Park 35 Circle, Suite 300, Austin. According to the agenda summary, the board will discuss approval of minutes of the July 23, 1993 meeting; hear nominating committee report; meet in executive session to consult with attorney on litigation issues; facilities lease discussion; management salary review; hear finance committee report; revised pension plan adoption; fiscal year 1994 budget adoption; internal audit plan adoption; discuss Articles of Incorporation and contracts of new entity; hear president's report; plan future meeting dates; and adjourn.

Contact: Peggy Irby, 12015 Park 35 Circle, Suite 300, Austin, Texas 78754, (512) 835-1900.

Filed: September 8, 1993, 4:19 p.m.

TRD-9328537

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**University Interscholastic
League**

Tuesday, September 14, 1993, 1:00 p.m. The State Executive Committee of the University Interscholastic League will meet at the Wyndham Hotel, IH-35 South at Ben White Boulevard, Austin. According to the agenda summary, the committee will review and discuss allegation of falsifying records in violation of §560(a)(3) by personnel at Mercedes High School; allegation members of LBJ High School Austin track team and Coach Ray Jackson violated §1201(b)(3)(c)(12); allegation that Aquilla High School failed to participate in District One-act play contest after signing participation card; and appeal of automatic penalty §1208(h) by Calvin Barber, Centerville High School.

Contact: C. Ray Daniel, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: September 7, 1993, 2:26 p.m.

TRD-9328423

**Texas Water Development
Board**

Wednesday, September 15, 1993, 3:00 p.m. The Audit Committee of the Texas Water Development Board will meet at 1900 North Chaparral Street, Watergarden Meeting Room of the Museum of Science and History, Corpus Christi. According to the complete agenda, the committee will consider approval of the minutes of the July 15, 1993 meeting; the audit plan for fiscal year 1994; may discuss items on the agenda of the September 16, 1993 board meeting; conduct six month performance review of the internal auditor; will be briefed on current projects in progress; and on work performed by the State Auditor's Office.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: September 7, 1993, 2:24 p.m.

TRD-9328422

Wednesday, September 15, 1993, 4:00 p.m. The Policy and Finance Committee of the Texas Water Development Board will meet at 1900 North Chaparral Street, Watergarden Meeting Room of the Museum of Science and History, Corpus Christi. According to the complete agenda, the committee will consider approval of the minutes of the meeting of August 18, 1993; Hudspeth County Water Control and Improvement District Number One EDAP project application; discuss potential application Park Board of Trustees, City of Galveston, for financial assistance for beach renourishment in the amount of approximately \$4,800,000; briefing on and discuss Rider Number 3.a(e), Texas Water Development Board Appropriations, for \$3 million for planning and permitting projects in the Trans-Texas Water Program; briefing on present and future EDAP projects; consider proposal for sale of the board's ownership in Toledo Bend Dam and Reservoir to Sabine River Authority; and may consider items on the agenda of the September 16, 1993 board meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: September 7, 1993, 2:24 p.m.

TRD-9328421

Thursday, September 16, 1993, 9:00 a.m. The Texas Water Development Board will meet at 1201 Leopard Street, City Council Chambers, Corpus Christi. According to the agenda summary, the board will consider approval of minutes; financial, executive, and committee reports; extensions to loan commitment for Diana WSC; financial assistance for Cities of Jasper, Elsa, and Hudspeth counties WCID Number One; change to commitment for El Paso Lower

Valley Water District Authority; flood protection feasibility planning contract with North Central Texas Council of Governments; contract with Department of Information Resources for design and management services for the financial information system; report on South-Central portion of the Trans-Texas Water Program; authorizing actions for the sale of approximately \$125 million Texas Water Development Board State Revolving Fund (SRF) bonds; authorization to solicit proposals for underwriting team for future bond issues; changes to SRF lending rate methodology; Consensus State Water Planning efforts; and appointments to Lower Neches Valley Authority Board of Directors.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: September 8, 1993, 2:17 p.m.

TRD-9328515

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Texas Water Resources Finance Authority

Thursday, September 16, 1993, 9:00 a.m. The Texas Water Resources Finance Authority will meet at 1201 Leopard Street, City Council Chambers, Corpus Christi. According to the complete agenda, the authority will consider approval of minutes of the meeting of August 19, 1993; and authorizing the Executive Administrator and Development Fund Manager to solicit proposals for an underwriting team for future Authority negotiated bond issues and transactions.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: September 8, 1993, 2:17 p.m.

TRD-9328514

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Regional Meetings

Meetings Filed September 7, 1993

The Bexar Appraisal District Appraisal Review Board met at 535 South Main Street, San Antonio, September 10, 1993, at 5:30 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9328446.

The East Texas Council of Governments Private Industry Council met at the ETCOG Office, Kilgore, September 13, 1993, at 10:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9328413.

The North Texas Municipal Water District Board of Directors will meet at the Administrative Offices, 505 East Brown Street, Wylie, September 23, 1993, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9328426.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto County Courthouse, Palo Pinto, September 15, 1993, at 3:00 p. m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1234. TRD-9328425.

The Sabine Valley Center Executive Committee met in an emergency meeting at the Administration Building, 107 Woodbine Place, Judson Road, Longview, September 7, 1993, at 4:00 p.m. The emergency meeting was necessary because the executive committee needed to review the executive director's performance evaluation and compensation to be considered at the September 16, 1993, board meeting. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608. TRD-9328417.

The Texas Municipal Asset Pool Board of Directors will meet at the Riverway Bank, Board Room, Second Floor, Five Riverway, Houston, September 15, 1993, at 8:00 a.m. Information may be obtained from Debra Wallace, P.O. Box 56572, Houston, Texas 77256, (713) 552-2618. TRD-9328415.

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Meetings Filed September 8, 1993

The Appraisal District of Jones County Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, September 16, 1993, at 8:30 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9328506.

The Appraisal District of Jones County Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, September 16, 1993, at 8:40 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9328505.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District Office, 502 North Main Street, Linden, September 13, 1993, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9328513.

The Colorado County CAD Board of Directors will meet at the Colorado County

Courthouse, County Courtroom, 400 Spring, Columbus, September 14, 1993, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9328472.

The Guadalupe-Blanco River Authority Retirement Committee will meet at 933 East Court Street, Seguin, September 16, 1993, at 9:00 a.m. Information may be obtained from James E. Arnst, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9328467.

The Guadalupe-Blanco River Authority Industrial Development Corporation will meet at 933 East Court Street, Seguin, September 16, 1993, at 9:00 a.m. Information may be obtained from James E. Arnst, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9328465.

The Guadalupe-Blanco River Authority Board of Directors will meet at 933 East Court Street, Seguin, September 16, 1993, at 10:00 a.m. Information may be obtained from James E. Arnst, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9328466.

The Henderson County Appraisal District Board of Directors will meet at 1751 Enterprise, Athens, September 20, 1993, at 7:00 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD-9328493.

The High Plains Underground Water Conservation District Number One Board of Directors will meet in the Conference Room, 2930 Avenue Q, Lubbock, September 14, 1993, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9328497.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, September 15, 1993, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9328468.

The Limestone County Appraisal District Board of Directors will meet at the Limestone County Courthouse, Board Room, Ground Floor, Groesbeck, September 14, 1993, at 1:00 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9328473.

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Meetings Filed September 9, 1993

The Bi-County WSC will meet at the Bi-County WSC Office, FM Road 2254, Pittsburg, September 14, 1993, at 7:00 p.m.

Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9328557.

The Brazos Valley Development Council Personnel Committee met at 4444 Carter Creek Parkway, Suite 208, Bryan, September 13, 1993, at 4:00 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9328563.

The Canyon Regional Water Authority Regular Board met at the Guadalupe Fire

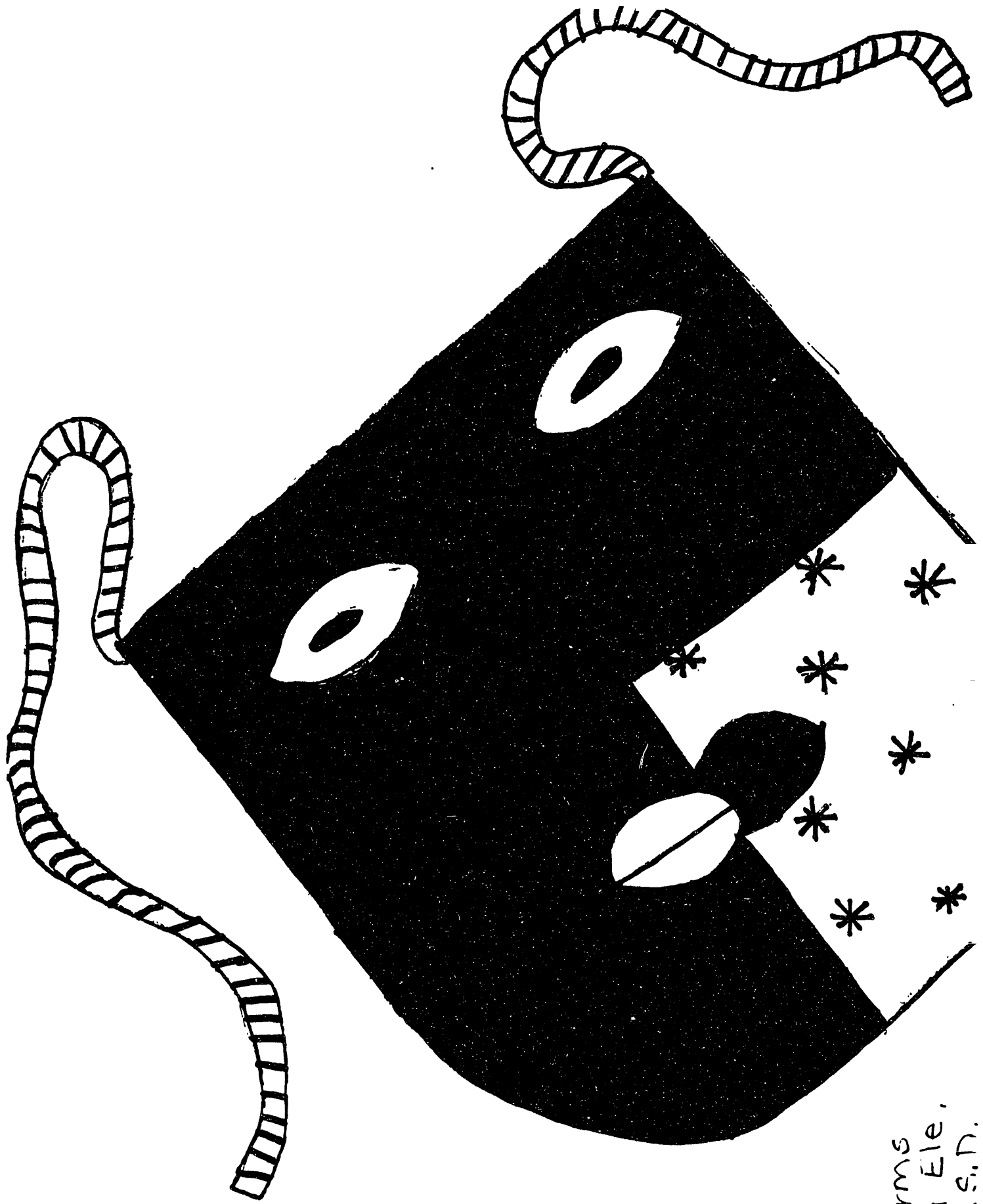
Training Facility, Route 2, Lakeside Pass Drive, New Braunfels, September 13, 1993, at 7:00 p.m. Information may be obtained from David Davenport, Route 2, Box 654 W, New Braunfels, Texas 78130-9579, (210) 608-0543. TRD-9328555.

The Concho Valley Council of Governments Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, September 15, 1993, at 7:00 p.m. Information may be obtained from Robert R.

Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9328562.

The Gulf Coast State Planning Region Transportation Policy Council will meet at 3555 Timmons Lane, Second Floor, Conference Room A, Houston, September 17, 1993, at 9:30 a.m. Information may be obtained from Rosalind Hebert, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9328552.





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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse Statewide Advisory Council Meeting

The Statewide Advisory Council of the Texas Commission on Alcohol and Drug Abuse will meet Thursday, September 23, 1993, 8:30 a.m. to 5:00 p.m., and Friday, September 24, 1993, 8:30 a.m. to noon. The meeting will be held at the Radisson Hotel, 6060 North Central Expressway, Dallas.

Issued in Austin, Texas, on September 7, 1993.

TRD-9328419 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: September 7, 1993

Comptroller of Public Accounts Consultant Contract Award

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Comptroller of Public Accounts furnishes this notice of consultant contract award.

The consultant proposal request was published in the July 23, 1993, issue of the *Texas Register* (18 TexReg 4898).

The consultant will conduct an evaluation of the programs and functions of the Department of Criminal Justice relat-

ing 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 contract is awarded to B.R. Blackmarr & Associates, 2515 McKinney Avenue, Suite LB-17, Dallas, Texas 75201. The total dollar value of the contract is not to exceed \$869,920. The contract was executed September 3, 1993, and extends through February 28, 1999. B.R. Blackmarr & Associates, Inc., is to present a report on or about March 1, 1994, of conclusions reached from the services performed under said contract.

Issued in Austin, Texas on September 8, 1993.

TRD-9328481 Arthur F. Lorton
Senior Legal Counsel, General Law Section
Comptroller of Public Accounts

Filed: September 8, 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, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer⁽³⁾/Agricultural/ Commercial⁽⁴⁾ thru \$250,000</u>	<u>Commercial⁽⁴⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	09/06/93-09/12/93	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(1)	09/01/93-09/30/93	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	10/01/93-12/31/93	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	10/01/93-12/31/93	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d) ⁽³⁾	10/01/93-12/31/93	14.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾	10/01/93-12/31/93	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	10/01/93-12/31/93	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	09/01/93-09/30/93	10.00%	10.00%

⁽¹⁾For variable rate commercial transactions only. ⁽²⁾Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S. ⁽³⁾Credit for personal, family or household use. ⁽⁴⁾Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328407 Al Endsley
Consumer Credit Commissioner

Filed: September 7, 1993

Court Reporters Certification Board Reprimand

On August 14, 1993, Ms. Elva Salinas of Houston, Certification Number 896, was reprimanded as a Certified Short-

hand Reporter by the Court Reporters Certification Board. The Board found that Ms. Salinas engaged in acts which constitute unprofessional conduct. Ms. Salinas was ordered to pay monthly refund payments totaling \$360 before September 1, 1994, to the Complainant, Dr. John B. Gatewood of Dallas. If Ms. Salinas does not comply, then her certification shall be suspended commencing on September 1, 1994, until the Complainant is refunded \$360.

Issued in Austin, Texas, on September 3, 1993.

TRD-9328424 Peg Liedtke
Executive Secretary
Court Reporters Certification Board

Filed: September 7, 1993

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**Texas Department of Housing and
Community Affairs**

**Notice of Public Hearing: 1994 Annual
Plan and 1993 Performance Report**

This is a notice regarding availability of the State of Texas 1994 Annual Plan, Five-Year Plan, and the 1993 Performance Report (the "Report") of the Comprehensive Housing Affordability Strategy (CHAS) prepared by the Texas Department of Housing and Community Affairs in compliance with instructions from the U. S. Department of Housing and Urban Development (HUD). The 1994 Annual Plan is the first year of the five-year plan. The five-year plan outlines the State's housing needs, priorities for allocating available funds for housing-related activities, the residents to be assisted, and an investment plan which identifies the resources available to address those priorities. The Performance Report contrasts what was planned for fiscal year 1993 and what was actually accomplished.

The following are the State's priority populations of those most in need of affordable housing, a sample list of the categories of persons and households to be assisted by housing-related programs, and the resources which will be available to address the priorities. The Texans most in need of affordable housing are those with household income from 0-80% of Median Family Income (MFI) and who are:

- a) paying over 30% of their income on mortgage or rent plus utilities;
- b) living in substandard housing;
- c) living in the Colonias within 100 miles of the Texas/Mexico border;
- c) having special needs;
- e) with children under six exposed to Lead Based Paint (LBP) poisoning;
- f) living in poverty with children under 10 years of age;
- g) who are homeless;
- h) of minority age who are runaways;
- i) women with children who have been battered;
- j) frail elderly; and
- k) elderly and homeless.

Categories of Persons/Entities to be Assisted: Existing homeowners, first-time homebuyers, renters, elderly, homeless, persons with special needs, non-profit organizations and units of local government.

Resources: TDHCA Administered: HOME; HOPE I, II and III; Community Development Block Grant (CDBG), Low Income Housing Tax Credits (LIHTC), Single Family Housing Bonds, Multi-family housing bonds, Section 8 Rental Assistance, Energy Assistance Programs, Emergency Shelter Grants, Housing Trust Fund and Emergency Nutrition/Temporary Emergency Relief Program (ENTERP); **Administered by other agencies:** Farmers Home Administration (FmHA), Low Income Housing Preservation Program, Aid to Families with Dependent Children (AFDC), Section 612 Community Mental Health Services, Home Ownership for Persons with AIDS (HOPWA), Section 811 Supportive Housing for the Disabled, Section 202 Supportive Housing for the Elderly, Shelter Plus Care, Federal Emergency Management Administration Emergency Food and Shelter Program (FEMA), Water Development Bonds, Federal Home Loan Bank Affordable Housing (FHLB) Program and any other existing and/or future resources which address the housing needs of extreme, very low, low, and moderate income persons as well as persons with special needs in the State of Texas.

The Texas Department of Housing and Community Affairs will be conducting public hearings on the Draft of the 1994 Annual Plan, Five-Year Plan, and the 1993 Performance Report at the locations and times listed below. Representatives will be present to explain the Plan and Report as well as receive comments on proposed housing strategies. The public hearings are scheduled at the following locations: Tuesday, September 21, 1993, from 3:00-5:00 p.m. at the Retama Village Community Room, 901 North 23rd Street, McAllen; Wednesday, September 22, 1993, from 3:00-5:00 p.m. at the Convention Center, El Paso Room, 1 Civic Center Plaza, El Paso; Thursday, September 23, 1993, from 3:00-5:00 p.m. at the Odessa Housing Authority, 124 East Second Street, Odessa; Monday, October 4, 1993, from 3:00-5:00 p.m. at the Denton County Court House on Square, Commissions Court Room, 110 West Hickory Street, Denton; Tuesday, October 5, 1993, from 3:00-5:00 p.m. at Raintree Tower, Community Room, 3300 French Street, Beaumont; and Wednesday, October 6, 1993, at the Texas Law Center, Rooms 101 and 102, 1414 Colorado Street, Austin.

Written comments on the CHAS and the Performance Report may be submitted at the public hearings listed above or sent to the address listed below no later than October 15, 1993, at 5:00 p.m. In addition, copies of the 1994 Annual Plan, Five-Year Plan and the 1993 Performance Report will be available for public review beginning September 15, 1993, at the Regional Councils and State Depository Libraries throughout Texas. Information on the 1994 CHAS and the 1993 Performance Report and copies of their summaries may also be obtained by contacting: Ninfa Moncada, Director of Marketing and Program Development, Texas Department of Housing and Community Affairs, P.O. Box 13942, Austin, Texas 78711-3941, (512) 475-3929.

Beginning September 15, 1993, the State of Texas's 1994 CHAS Annual Plan, Five-Year Plan and the 1993 Performance Report will be available for public review at the following locations: West Central Texas Council of Government, 1025 East North Tenth, Abilene, Texas 79601; Brazos Valley Development Council, 1706 East 26th Street, Bryan, Texas 77805; Capital Area Planning Council, 100 South East Street, Belton, Texas 76513; Panhandle Regional Planning Commission, 415 West Eighth Street, Amarillo, Texas 79101; North Central Texas Council of

Government, 616 Six Flags Drive, Arlington, Texas 76011; Middle Rio Grande Development Council, 1904 North First Street, Carrizo Springs, Texas 78834; Texoma Council of Governments, 10000 Grayson Drive, Denison, Texas 75020; Rio Grande Council of Governments, 1100 North Stanton, Suite 610, El Paso, Texas 79902; Deep East Texas Council of Governments, 274 East Lamar, Jasper, Texas 75951; East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662; South Plains Association of Governments, 1323 58th Street, Lubbock, Texas 79412, Mr. Jerry Casstevens; South East Texas Regional Planning Commission, 3501 Turtle Creek Drive, Port Arthur, Texas 77627; Heart of Texas Council of Governments, 300 Franklin Avenue, Waco, Texas 76701; Ark-Tex Council of Governments, 911 N. Bishop Road, Building A, Wake Village, Texas 75501; Nortex Regional Planning Commission, 4309 Jacksboro Highway, The Galaxy Center, Suite 200, Wichita Falls, Texas 76302; Texas State Library, 1201 Brazos, Austin, Texas 78768-2287; University of Texas Pan American, Documents Department/LRC, 1825 May Street, Brownsville, Texas 78520; Howard Payne University, Walker Memorial Library, 1000 Fisk Avenue, HPU Station, Brownwood, Texas 76801; East Texas State University, James Gilliam Gee Library, Documents Department, Commerce, Texas 78528; Fort Worth Public Library, Periodical and Documents Division, 300 Taylor Street, Fort Worth, Texas 76102; Coastal Bend Council of Governments, 2910 Leopard, Corpus Christi, Texas 78408; Houston-Galveston Area Council, 3555 Timmons Lane #500, Houston, Texas 77027; Lower Rio Grande Valley Development Council, 4900 North 23rd Street, McAllen, Texas 78504, South Texas Development Council, 1718 East Calton Road #14, Laredo, Texas 78041; Permian Basin Regional Planning Commission, 2910 La Force Boulevard, P.O. Box 60660, Midland, Texas 79711; Alamo Area Council of Governments 118 Broadway, Suite 400, San Antonio, Texas 78205, Concho Valley Council of Governments, 5002 Knickerbocker Road, San Angelo, Texas 76906; Golden Crescent Regional Planning Commission, Regional Airport, Building 102, Victoria, Texas 77901; Lee College Library, 511 South Whiting Street, Baytown, Texas 77520-4796, Sul Ross State University, Documents Department, Bryan Wildenthal Memorial Library, Alpine, Texas 79832; West Texas State Library, Cornette Library, 2501 Fourth Street, W T. Station, Documents Department, Canyon, Texas 79016; University of Texas Pan American, Edinburg Library, 1201 West University Drive, Government Documents, Edinburg, Texas 78539-2999; Nicholson Memorial Library System, 625 Austin Street, Garland, Texas 75040; Texas A&M University, Sterling C. Evans Library, Documents Division, College Station, Texas 77843-5000; University of North Texas Library, Government Publications, 1500 Highland Street, Willis Library, Government Documents, Denton, Texas 76203-5188; Sam Houston State University, Newton Gresham Library, Huntsville, Texas 77341; Longview Public Library, Adult Services Unit, 222 West Cotton, Longview, Texas 75601; University of Texas Permian Basin, 4901 East University Boulevard, Odessa, Texas 79762; Prairie View A&M University, John B. Coleman Library, Documents Department, Prairieview, Texas 77446; Texas Lutheran College, Blumberg Memorial Library, 1000 West Court Street, Seguin, Texas 78155; University of Texas-Tyler, Muntz Library, 3900 University Boulevard, Tyler, Texas 75701; Austin College, Abell Library Center, 900 North Grand, Sherman, Texas 75090; Dallas Public Library, Government Documents, 1515 Young Street, Dallas, Texas 75201; Rosenberg Public Library, 2310 Sealy Avenue,

Galveston, Texas 77550; Texas Arts and Industries University, Jernigan Library, Box 197, Government Documents, Kingsville, Texas 78363; Stephen F. Austin State Library, Steen Library, Box 13055/SFA Station, Nacogdoches, Texas 75962; Irving Public Library System, 801 Irving Boulevard, Irving, Texas 75060; University of Texas at Dallas, Documents, McDermott Library, 2601 North Floyd Road, Richmond, Texas 75083; Tarleton State University, Dick Smith Library, Education Library, Stephenville, Texas 76402; Southwest Texas State University Library, Alkek Building, Documents, San Marcos, Texas 78666-4604.

Issued in Austin, Texas, on September 7, 1993.

TRD-9328483

Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: September 8, 1993

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**Texas State Library and Archives
Commission**

Local Government Records Committee

Notice is hereby given, pursuant to Texas Government Code, §441.163, for the purpose of accepting nominations to fill a vacancy on the Local Government Records Committee.

Nominations will be accepted through October 8, 1993, to fill the position of a local government records management officer other than an elected county officer.

A nomination may be made by an organization representing officers of the type to be appointed and that has 50 such officers as members. In choosing between two or more nominees, the director and librarian is required by law to give preference to a nomination or nominations received from organizations whose membership consists primarily of the type of officer to be appointed.

Nominations should be sent to William D. Gooch, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

Issued in Austin, Texas, on September 2, 1993.

TRD-9328399

Raymond Hitt
Assistant State Librarian
Texas State Library and Archives
Commission

Filed: September 7, 1993

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**Texas Department of Mental Health
and Mental Retardation**

**Projects for Assistance in Transition
from Homelessness (PATH) FFY 93
Request for Proposals**

Ann Denton, Coordinator for Housing and Residential Services at the Texas Department of Mental Health and Mental Retardation has announced the availability of funds to contract for services for persons who are both literally homeless and have a serious mental illness

Summary. Projects for Assistance in Transition from Homelessness (PATH) is a federally funded program pro-

viding services to persons who are both literally homeless and have a serious mental illness. Allowable services include outreach, care management, dual diagnosis services for persons who are mentally ill and who also abuse substances, rehabilitation and habilitation services, and psychiatric services. Up to 20% of any award may be spent to provide short-term housing assistance. The goal of the program is to assist persons who have a serious mental illness as they make the transition from being on the streets or in shelters to a more stable housing situation. Population of interest.

The PATH program's population of interest includes: people who are suffering from a serious mental illness; or people who are suffering from a serious mental illness and substance abuse disorders, and people who are homeless or at imminent risk of becoming homeless. At least 75% of the people served by the PATH program must be literally homeless.

Targeted Region. This funding is intended to expand services to persons who are both homeless and have a mental illness in the South Texas region. (Region 8b, State Comprehensive Housing Affordability Strategy FY93). This region includes the counties of: Aransas, Bee, Brooks, Cameron, Dimmit, Duval, Edwards, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, Maverick, McMullen, Nueces, Real, Refugio, San Patricio, Starr, Uvalde, Val Verde, Webb, Willacy, Zapata, Zavala.

Eligible Applicants. Eligible applicants include designated mental health authorities for the South Texas region, community action agencies, and private non-profit homeless service providers. Applicants must have organizational experience with persons who are literally homeless, persons who have a serious mental illness, or both. Preference will be given to applicants experienced with the target population: literally homeless persons who also have a serious mental illness. Applicants who have experience with persons who are literally homeless but lack experience with persons who have a serious mental illness must present a plan for accessing mainstream services from the designated local mental health authority. Applicants who have experience with persons who have a serious mental illness but who lack experience with persons who are homeless must present a plan for outreach and case-finding that includes relevant homeless service providers.

Timelines. Applications are due to the department no later than 5:00 p.m. on Monday, October 20, 1993. Faxed applications will not be accepted. Applications may be mailed to TXMHMR, P.O. Box 12668, Austin, Texas 78711-2668. Applications should be delivered to TXMHMR, 909 West 45th Street, Austin, Texas 78756.

Applications should be marked Attn: Ann Denton or Patrick Haney. Applications will be reviewed October 21 through October 27, 1993. Awards will be announced on October 28, 1993. The latest program start-date will be December 1, 1993.

Allocation amounts. Total funds available = \$120,000. The department expects to make awards to three or four applicants.

Period of Award. Applicants should prepare a 12-month budget, beginning December 1, 1993. Continuation funding may be available and, if available, will be awarded based on performance and merit of the proposed continuation program.

Cultural relevance. All services must be planned and implemented in a culturally relevant fashion. This is a ranking criterion for funding.

Inquiries. Interested parties are urged to contact the Texas Department of Mental Health and Mental Retardation for an application outline prior to drafting proposals to facilitate the request for proposal process. Inquiries should be directed to Ann Denton or Patrick Haney at (512) 206-4896.

Technical assistance. A technical assistance meeting will be held in Region 8b on Monday, September 27th from 2:00 to 4:00 p.m. Details regarding this meeting can be obtained by calling Ann Denton or Patrick Haney at (512) 206-4896.

Review criteria. Reviewers will use the following criteria to evaluate proposals: need for services, linkages/cooperation with appropriate providers, description of existing services to persons who are homeless and mentally ill, identification of gaps in services, and rationale for how this funding will meet that need; cultural relevance; description of proposed program; results or benefits expected; service coordination/participation in local planning; and budget and match funds.

Issued in Austin, Texas, on September 7, 1993.

TRD-9328463 Ann Denton
Coordinator, Housing and Residential
Services
Texas Department of Mental Health and
Mental Retardation

Filed: September 7, 1993

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Public Utility Commission of Texas
Notice of Application

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 25, 1993, to amend to Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Central Power and Light Company and Medina Electric Cooperative, Inc. to amend certificated service area boundaries within Medina County, Docket Number 12256 before the Public Utility Commission of Texas.

The Application. In Docket Number 12256, Central Power and Light Company (CPL) and Medina Electric Cooperative, Inc. requests approval of its application to revise current certificated service area boundaries with Medina Electric Cooperative, Inc. in Medina County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on September 3, 1993.

TRD-9328444 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 7, 1993

**Texas Department of Transportation,
Division of Aviation**

Request for Proposals

The following requests for qualifications for providing professional engineering services are filed under the provision of Texas Civil Statutes, Article 664-4.

The Division of Aviation will solicit and receive qualifications for professional services for the design and construction administrative phases for each individual project listed below:

TxDOT Project Number: 93-05-031, Airport Sponsor: County of Dimmit, Project Scope: At the Dimmit County Airport, reconstruct and mark runway, taxiway and aprons; rehabilitate and mark taxiways and apron; construct turn-arounds; construct drainage improvements; pave access taxiways; replace low intensity runway lights with medium intensity runway lights; install visual glideslope indicator system, runway end identifier lights, rotating beacon and tower, fencing; relocate lighted windcone and segmented circle; provide for erosion and sedimentation controls; and associated appurtenances. Estimated total cost of the project is \$1,621,400, Project Manager: Ramiro Gutierrez.

TxDOT Project Number: 95-01-041, Airport Sponsor: County of Stephens, Project Scope: At the Stephens County Airport, extend, overlay, and mark runway and taxiway; reconstruct apron; replace rotating beacon and tower; relocate runway approach lighting (visual approach slope indicator); extend runway lighting; install fencing; improve safety areas; provide for erosion and sedimentation controls; and associated appurtenances. Estimated total cost of the project is \$1,149,600, Project Manager: Ronnie Moore.

TxDOT Project Number: 95-16-061 Airport Sponsor: City of Mineral Wells, Project Scope: At the Mineral Wells Municipal Airport, reconstruct taxiways; rehabilitate and mark runways, taxiways and apron; relocate runway lights; improve drainage; install fencing; provide for erosion and sedimentation controls; and associated appurtenances. Estimated total cost of the project is \$510,000. Project Manager: Ronnie Moore.

TxDOT Project Number: 95-02-051, Airport Sponsor: City of Brenham, Project Scope: At the Brenham Municipal Airport, the design and construction phases for improvements to the taxiway and apron pavements; install visual glideslope indicator system and runway end identifier lights systems; replace rotating beacon and windcone; and associated appurtenances. Estimated total cost of the project is: \$903,900, Project Manager: Ed Oshinski.

TxDOT Project Number: 95-08-031, Airport Sponsor: City of Eagle Lake, Project Scope: At the Eagle Lake Municipal Airport, the design and construction phases for improvements to the runway, taxiway, apron pavements, including extending and widening runway with turn-around; reconstruct taxiway and apron; rehabilitate runway, taxiway and apron; install runway lighting system, runway end identifier lights, visual glideslope indicator system, segmented circle, and perimeter fencing; provide for erosion and sedimentation controls; improve drainage; lower powerline; and associated appurtenances. Estimated total cost of the project is: \$651,500, Project Manager: John Wepryk.

TxDOT Project Number: 95-09-081, Airport Sponsor: City of Ennis, Project Scope: At the Ennis Municipal Airport,

the design and construction phases for improvements to the runway, taxiway, and apron pavements, including gradient adjustment; install visual glideslope indicator and runway end identifier lights systems; install erosion and sedimentation control measures; and associated appurtenances. Estimated total cost of the project is: \$536,200, Project Manager: Ed Oshinski.

TxDOT Project Number: 95-11-041, Airport Sponsor: City of Hamilton, Project Scope: At the Hamilton Municipal Airport, the design and construction phases, site preparation and earthwork; demolish runway and taxiway pavements; construct runway and taxiway pavements; reconstruct taxiway and apron pavements; install runway lighting and visual glideslope indicator system; replace rotating beacon, install segmented circle, and windcone; relocate non directional beacon; install fencing; install drainage structures; provide for erosion and sedimentation controls; and associated appurtenances. Estimated total cost of the project is: \$2,901,000, Project Manager: Ed Oshinski.

TxDOT Project No.: 95-14-061, Airport Sponsor: County of Hardin, Project Scope: At Hawthorne Field Airport, the design and construction phases for improvements to the runway, taxiway, apron pavements including extend runway and taxiway; rehabilitate runway, taxiway and apron; reconstruct entrance road; extend runway lighting system; install runway end identifier lights, and visual glideslope indicator system; provide for erosion controls; grade safety area; clear runway protection zone; and associated appurtenances. Estimated total cost of the project is: \$585,400, Project Manager: John Wepryk.

Those interested consulting engineers should submit for each project two unfolded copies of pages 1-3 of TxDOT, Division of Aviation Form 439 (dated August, 1993) to the: Texas Department of Transportation, Division of Aviation, Attention: Grant Administration, P.O. Box 12607, Austin, Texas 78711 (512) 476-9262; 410 East Fifth Street, Austin, Texas 78701, (512) 476-9262.

Those firms which do not already have a copy of Form 439 (dated August 1993) should request one from the above address. Qualifications will not be accepted in any other format.

Two completed unfolded copies of Form 439 (dated August 1993) for each project must be received by 4:00 p.m. (CST), September 23, 1993. The three pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

The airport sponsor(s) duly appointed committee will review all professional qualifications and select three to five engineering firms for proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantaged Business Enterprise (DBE) participation, design schedule, and other matters, prior to the final selection process. The final consultant selection will be made following the completion of the review of proposals and/or interviews. Procedures for award will be in accordance with FAA Advisory Circular AC 150/5100-14C.

The airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new consulting engineer selection procedures for future projects.

If there are any questions, please contact Karon Wiedemann, Manager, Grant Administration, Division of Aviation, Texas Department of Transportation, or the Division of Aviation project manager at (512) 476-9262.

Issued in Austin, Texas, on September 3, 1993.

TRD-9326327 Diane L. Northam
 Legal Administrative Assistant
 Texas Department of Transportation

Filed: September 3, 1993



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 week preceding 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 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 Friday, September 10	Friday, September 3	Tuesday, September 7
70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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