

Texas Register

Volume 18, Number 77, October 8, 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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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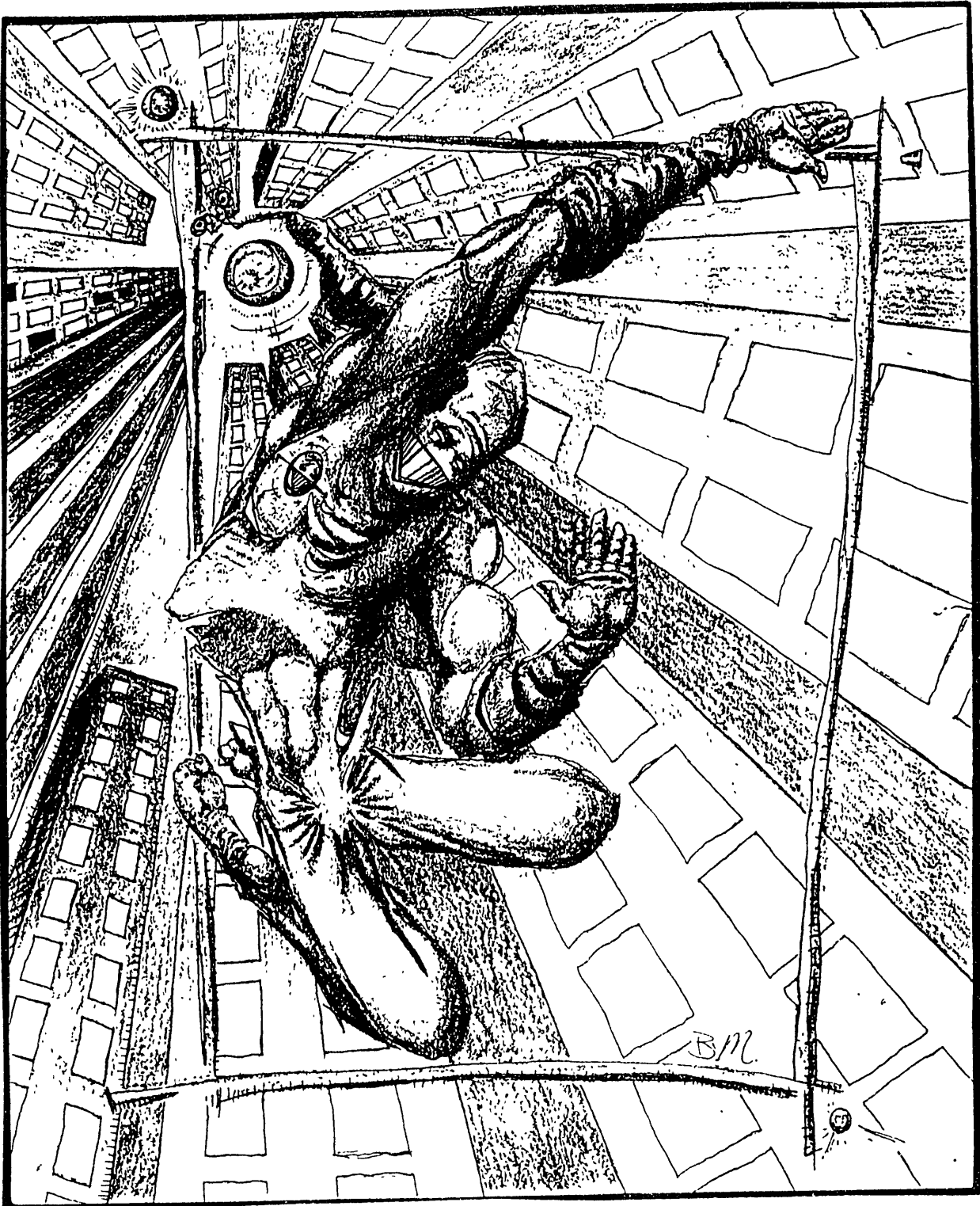
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Leanna Kesh

Texas Ethics Commission

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

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

Texas Ethics Commission Opinions

AOR-194. The Ethics Commission has been asked to explain how Title 15 of the Election Code applies to a contribution to a Texas candidate from participants in a corporation's employee participation plan established under regulations of the Federal Election Commission.

AOR-195. The Texas Ethics Commission has been asked to consider whether members of the Texas Peace Officers' Memorial Advisory Committee are required to file financial disclosure statements under Texas Civil Statutes, Article 6252-9b.

AOR-196. The Ethics Commission has been asked to consider whether a corporate political committee may make contributions to a political party for a building.

AOR-197. The Texas Ethics Commission has been asked to consider the following questions:

1. Is it a violation of any code or regulation for any Independent School District to purchase voter registration lists with ISD funds?

2. Is it a violation of any code or regulation for any ISD to compile or maintain a voter registration list on ISD computers or in ISD files?

3. Is it a violation of any code or regulation for any ISD to compile voter registration lists and then transfer said lists to private concerns or companies for the purpose of supporting or opposing a political candidate?

4. Is it a violation of any code or regulation for any ISD to enter into or maintain a written agreement with a company or concern which specifies that a registered voter list provided by the ISD to said company or concern is to be accessed only by a particular political candidate as named by the ISD?

5. Is it a violation of any code or regulation to provide office space to an ISD employee organization which maintains a political action committee that endorses and/or monetarily supports political candidates?

6. Is it a violation of any code or regulation for any ISD to provide an ISD employee to serve as an employee organization secretary, particularly when the employee orga-

nization maintains a political action committee which regularly supports or opposes political candidates?

7. Is it a violation of any code or regulation for a political action committee to meet in any ISD facility for the purpose of supporting or opposing a political candidate or issue?

8. Is it a violation of any code or regulation for any person or organization to utilize ISD telephone, during or after business hours, to support or oppose a political candidate or issue?

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

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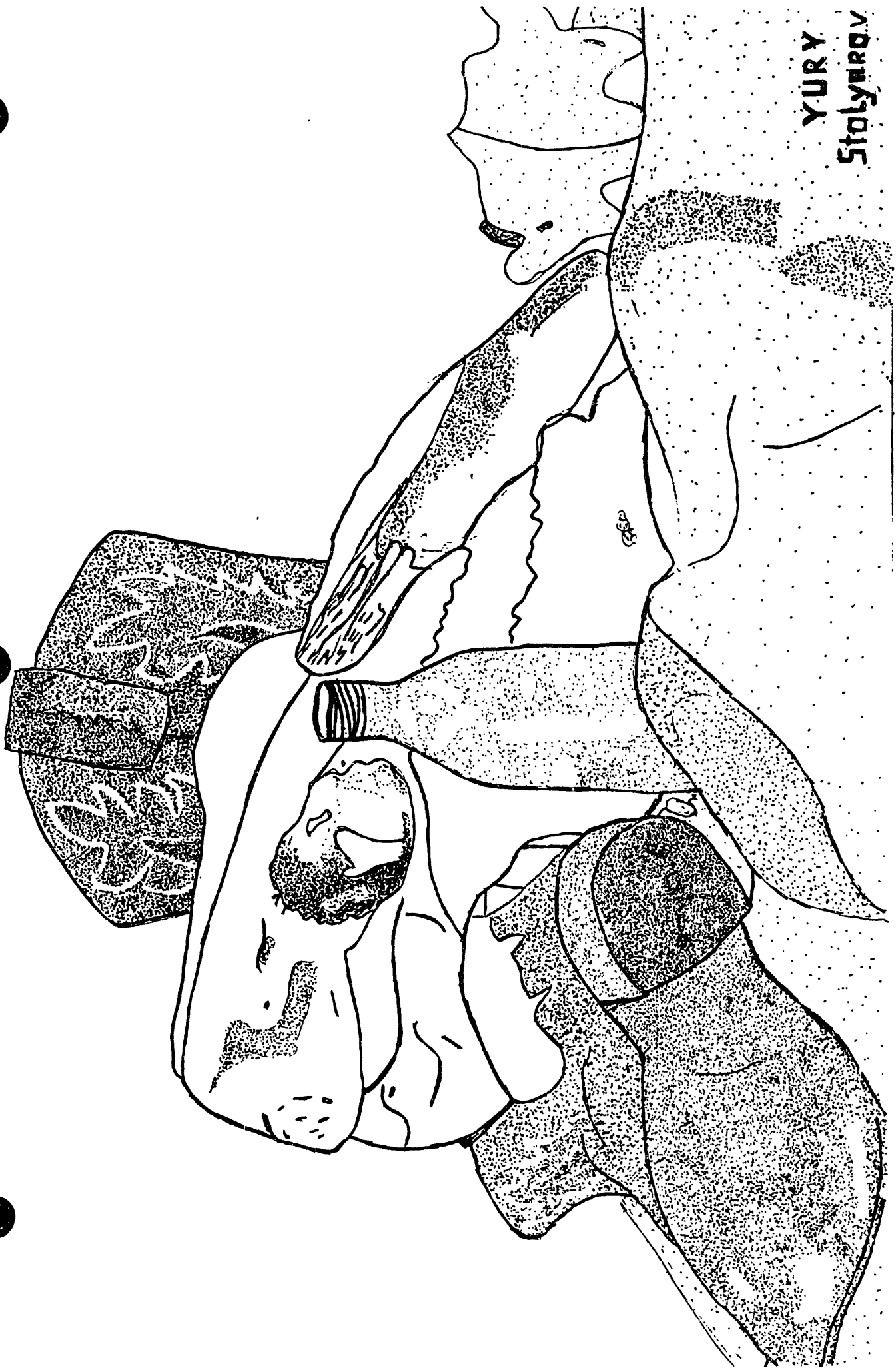
TRD-9329603

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: September 29, 1993

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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 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

General Information

• 22 TAC §511.11

The Texas State Board of Public Accountancy adopts on an emergency basis new §511.11, concerning the examination of applicants. The new section is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.11. Definitions.

(a) Wherever the term "examination" or "exam" appears in these rules, reference is made to the Uniform Certified Public Accountant Examination (UCPAE) and any reciprocal equivalency examination prepared and graded by the American Institute of Certified Public Accountants (AICPA), to include, but not limited to, the UCPAE and any reciprocal equivalency exam.

(b) Wherever the term "applicant" or "candidate" appears in these rules, reference is made to any person attempting any examination prepared and graded by the AICPA, to include but not limited to, the UCPAE and any reciprocal equivalency exam.

Issued in Austin, Texas, on September 28, 1993.

TRD-9329578

William Treacy
Executive Director
Texas State Board of
Public Accountancy

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Expiration date: January 28, 1994

For further information, please call: (512) 505-7066

Certification by Examination

• 22 TAC §511.28

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.28, concerning examination fees. The amendment extends examination fees to certain uniform examinations. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.28. Examination Fee.

(a) An applicant who submits an initial application for the UCPA examination must pay the requisite fee as follows:

(1) nonrefundable filing fee;

(2) examination fee set by board rule for each subject on the UCPA examination.

(b) An applicant who submits an application for reexamination must pay a fee for each subject on the examination for which the applicant is eligible. The actual

fee set by the board is identified in §521.2 of this title (relating to Examination Fees) of the board's rules.

(c) An applicant who submits an application for the reciprocal equivalency examination, must pay the requisite fee as set by the board and identified in §521.2 of this title (relating to Examination Fees) of the board's rules.

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Texas State Board of
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CPA Examination

• 22 TAC §511.60

The Texas State Board of Public Accountancy adopts on an emergency basis new §511.60, concerning the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX). The new rule recognizes CAQEX, which is scheduled to commence in November, 1993. The new section is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate CAQEX, which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.60. Examination Authorization. This board recognizes the Canadian Chartered Accountant Uniform CPA Qualification Examination (CAQEX), written and graded by the American Institute of Certified Public Accountants, as a measure of profes-

sional competency necessary to obtain a CPA certificate by reciprocity under treaties entered into by the government of the United States.

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Executive Director
Texas State Board of
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For further information, please call: (512) 505-7066

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• 22 TAC §511.69

The Texas State Board of Public Accountancy adopts on an emergency basis new §511.69, concerning non-disclosure of examinations. The new section is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.69. *Non-Disclosed Exam.* Any examination prepared and graded by the American Institute of Certified Public Accountants (AICPA) shall be non-disclosed. The AICPA retains the right to determine whether the exam materials are destroyed or returned from the exam sites. The exam material may not be copied or retained by any person, or group.

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Executive Director
Texas State Board of
Public Accountancy

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• 22 TAC §511.73

The Texas State Board of Public Accountancy adopts on an emergency basis new

§511.73, concerning the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX). The new rule recognizes CAQEX and the subjects to be tested by CAQEX. The new section is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate CAQEX, which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.73 *Caqex Uniform Examination-Subjects.* The board shall utilize the Canadian Chartered Accountant Uniform CPA Qualification Examination (CAQEX), available from the American Institute of Certified Public Accountants, covering the following subjects.

- (1) professional responsibilities;
- (2) business law;
- (3) auditing;
- (4) taxation;
- (5) accounting and reporting-governmental and not-for-profit organizations; and
- (6) financial accounting and reporting-business enterprises.

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William Treacy
Executive Director
Texas State Board of
Public Accountancy

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For further information, please call: (512) 505-7066

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• 22 TAC §511.76

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.76, concerning refund policy. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November,

1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.76. *Refund Policy.*

(a) The board will grant a full refund of the examination fee if the applicant withdrawn from the examination and notifies the board in writing prior to the deadline for applying for the examination (February 28/29 or August 31).

(b) The board will grant a full refund of the examination fee to any applicant who fails to meet the minimum requirements to take the examination, and the board will grant a refund of one-half of the total fee paid per part by the applicant who submits an incomplete application for the examination and does not remedy the deficiency, and as a result is not permitted to take the examination.

(c) The board will grant a refund of one-half of the total fee paid per part by the applicant who withdraws after the filing deadline because of extreme hardship.

(d) Extreme hardship for refund purposes shall be defined as a serious illness of the candidate or member of the immediate family or death of an immediate family member. Any other extreme hardship situation will be reviewed on a case-by-case basis by the board.

(e) All requests for refunds based on extreme hardships must be in writing and provide documentation of the extreme hardship requiring withdrawal from the examination. The requests for refunds for the May examination must be received by the board on or before the 15th of November following the examination. The request for refund for the November examination must be received by the board on or before the 15th of May following the examination.

(f) No examination fee will be transferred to a subsequent examination

(g) The filing fee paid for an initial examination application is nonrefundable.

(h) Fees received from an applicant for a reciprocal equivalency examination are non-refundable. [Notwithstanding subsections (a)-(e) of this section, \$50 of the initial examination fee is nonrefundable for the November 1991 examination.]

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Texas State Board of
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Texas State Board of
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For further information, please call: (512) 505-7066

(1) the candidate takes all parts of the examination for which the candidate is eligible; and

(2) the candidate earns a grade of 75 or higher on one or more subjects of the examination; and

(3) the candidate scores a minimum grade of 50 on each subject not passed at the examination.

(c) A candidate receiving and retaining credit for every subject on the UCPA examination, subject to the limitations imposed by the Act, shall be considered by the board to have completed the examination and may make application for certification as a certified public accountant.

(d) A candidate who has received and retained credit for any or all subjects on the UCPA examination may transfer such credits to another licensing jurisdiction if the candidate pays in advance a transfer fee set by board rule as identified in §521.7 of this title (relating to Fee for Transfer of Credits).

(e) A candidate who earns a grade of 75 or higher on a reciprocal equivalency examination shall be considered by the board to have completed the examination and is eligible to receive a certificate as a certified public accountant subject to completing the work experience requirements.

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William Treacy
Executive Director
Texas State Board of
Public Accountancy

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For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.78

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.78, concerning inspection of questions and answers. The amendment allows applicants to review their answers to uniform examinations. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.78. *Inspection of Questions and Answers.*

(a) Within 90 days following the release of the Uniform Certified Public Accountant (UCPA) [an] examination result, any candidate who sat for that examination may inspect a copy of the questions and answers thereto made by him or her on the examination, with the grade clearly shown, together with a copy of the solutions to such questions. All requests for inspections of copies of questions and answers shall be made at the board office during regular office hours, and copies of the examination or answers may not be made.

(b) The reciprocity equivalency exam is not subject to disclosure, inspection, or review.

(c) Any exam prepared and graded by the American Institute of Certified Public Accountants as defined in §511.11 of this title (relating to Definitions), after November 1995, may not be released to any individual or organization.

◆ ◆ ◆
• 22 TAC §511.80

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.80, concerning uniform examinations. The amendment recognizes uniform examinations. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.80. *Granting of Credit.*

(a) The board shall grant conditional [conditioning] credit to a candidate for the satisfactory completion of the written Uniform Certified Public Accountant (UCPA) examination under the following conditions:

(1) the candidate takes all parts of the examination for which the candidate is eligible; and

(2) the candidate earns a grade of 75 or higher on any two subjects of the examination; or

(3) the candidate earns a grade of 75 or higher on the accounting practice subject of the examination; and

(4) the candidate scores a minimum grade of 50 on each subject not passed at the examination.

(b) The board shall grant credit after the establishment of conditional [conditioning] credit to a candidate for the satisfactory completion of any subject under the following conditions:

◆ ◆ ◆
Examination Investigation and Board Action

• 22 TAC §511.102

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.102, concerning the filing of complaints. The amendment extends the procedures for the filing of a complaint regarding the eligibility of an examination applicant to applicants for uniform examinations. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute

of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.102. Filing Complaints. The board may, on its own motion, or on the complaint of any person, initiate proceedings to determine the eligibility of any person applying for or taking the [uniform CPA] examination. Chapter 519 of this title (relating to Practice and Procedure) provides for the notice and hearing. Sufficient cause for this action includes, but is not limited to, any of the following instances:

(1) fraud or deceit by an applicant on the [uniform CPA] examination application;

(2) final conviction of a felony or of any crime, where an element is dishonesty or fraud, under the laws of any state or of the United States, or the imposition of deferred adjudication in connection with the criminal prosecution of such an offense;

(3) conduct indicating a lack of fitness to serve the public as a professional accountant; and

(4) cheating on the [uniform CPA] examination.

Issued in Austin, Texas, on September 28, 1993.

TRD-9329556

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: September 29, 1993

Expiration date: January 28, 1994

For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.103

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.103, concerning action relating to moral character. The amendment extends the procedures for action relating to the moral character of an examination applicant to applicants for uniform examination. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North Amer-

ican Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.103. Action Relating to Moral Character.

(a) The board, having conducted a hearing under this title, may reach the following conclusions:

(1) deny the applicant the opportunity to take the [uniform CPA] examination;

(2) prohibit the applicant from taking the [uniform CPA] examination for a period not to exceed five years; or

(3) close the case without adverse action against the applicant.

(b) The board shall refund the fee submitted by the applicant to take the [uniform CPA] examination if the applicant is denied or prohibited the opportunity to take the [uniform CPA] examination.

(c) The applicant may petition the board in writing for a reversal of the board's findings. After notice and hearing the board may:

(1) approve an application to take the [uniform CPA] examination that was previously denied;

(2) uphold its prior findings;

(3) overturn its prior findings; or

(4) modify its prior findings.

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Texas State Board of
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For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.104

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to § 511.104, concerning action relating to unusual similarities involving the uniform CPA examination. The amendments extend the procedure for inquiring into unusual examination similarities to uniform CPA examinations. The amendment is being con-

temporarily proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.104. Action Relating to Unusual Similarities Involving the [Uniform CPA] Examination. Any action on the part of an examination candidate while in the process of taking the [uniform CPA] examination, which violates or is suspected of violating the rules governing conduct during the [uniform CPA] examination, is subject to the board initiating proceedings and filing a complaint against the candidate.

(1) The board, having conducted a hearing under this title with a candidate who wrote the [uniform CPA] examination, may reach the following conclusions:

(A) prohibit the candidate from taking the [uniform CPA] examination[s] for a period not to exceed [the] *f*ve years;

(B) void the candidate's [CPA] examination grades;

(C) issued a public reprimand;

(D) any combination of subparagraphs (A)-(C) of this paragraph; or

(E) close the case without adverse action against the candidate.

(2) The candidate may petition the board in writing for a reversal of the board's findings. After notice and hearing the board may:

(A) reinstate the grades of a candidate that were previously voided;

(B) uphold its prior findings;

(C) overturn its prior findings; or

(D) modify its prior findings.

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William Treacy
Executive Director
Texas State Board of
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For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.105

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.105, concerning the confidentiality of examination applicant's files. The amendments extend confidentiality to a uniform examination applicant's files. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.105. Confidentiality. Any file maintained, including information gathered or received from a third party, by the board concerning an applicant or candidate for the [uniform CPA] examination shall be available for inspection by that person during normal business hours at the board office in Austin.

(1) An applicant or candidate may authorize in writing that the board make this same information available to a designated person or the general public, except for information concerning a disciplinary proceeding against the applicant or candidate to take the [uniform CPA] examination prior to a public hearing.

(2) The name and mailing address of an applicant or candidate is public information and therefore available upon request.

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William Treacy
Executive Director
Texas State Board of
Public Accountancy

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For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.106

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.106, concerning examination hearings. The amendment extends the procedures for examination hearings to uniform examinations. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.106. Examination Hearings. Unless otherwise determined by the board, the following are reasons why a person is not authorized to take the [uniform CPA] examination.

(1) The board shall not authorize a person to take the [uniform CPA] examination if the board finds the individual has been convicted of a felony offense which results in incarceration, probation, parole, mandatory supervision, or deferred adjudication.

(2) The board shall not authorize a person to take the [uniform CPA] examination if the board finds that the individual has been convicted of a felony or misdemeanor offense, or granted a deferred adjudication which directly relates to the practice of public accountancy.

(3) A person applying for the [uniform CPA] examination who can be identified in paragraphs (1) or (2) of this section has the right to a hearing before the board to present evidence relative to the conviction. As a part of the hearing, the board shall consider the following issues before reaching a verdict:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the board's statutory responsibility to ensure that a person, at some point in the future, professing to practice public accountancy, maintains high standards of competence and integrity in light of the reliance of the public, and the business community in particular, on the report or other services provided by accountants;

(C) the extent to which the person might have an opportunity to engage in future criminal activity of the same type as that in which the individual was previously involved;

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a certified public accountant, once the person passes the [uniform CPA] examination and is licensed by the board;

(E) the extent and nature of the individual's past criminal activity;

(F) the age of the individual at the time of the commission of the offense;

(G) the amount of time which has elapsed since the individual's last criminal activity;

(H) the conduct and work activity of the individual prior to and following the criminal activity;

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

(J) other evidence of the individual's present fitness, including letters or recommendation from prosecution, law enforcement, and correction officers who prosecuted, arrested, or had custodial responsibility for the individual; the sheriff and chief of police in the area where the individual resides; and any other persons in contact with the individual. It shall be the responsibility of the individual to the extent possible to secure and provide to the board the recommendation of the prosecution, law enforcement, and correctional authorities as required under this section. The individual shall also furnish proof to the board that he/she has maintained a record of steady employment and has supported his/her dependent; and has 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/she has been convicted.

(4) Because an accountant is often placed in a position of trust with respect to client funds, the public in general and the business community in particular rely on the reports and other services of accountants. The board considers that the following crimes directly relate to the practice of public accountancy:

(A) any felony or misdemeanor of which fraud or deceit is an essential element;

(B) any felony or misdemeanor which results in the suspension or revocation of the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action; and

(C) any crime involving moral turpitude.

(5) The following procedures shall apply in the processing of an application to write the [uniform CPA] examination.

(A) The applicant will be asked to respond, under penalty of perjury to the question, "Have you ever been convicted of a felony or a misdemeanor, placed on probation, or granted deferred adjudication in any state or by federal government?"

(B) The board shall obtain criminal history record information as stipulated in this chapter on any applicant about whom the executive director finds evidence to warrant a record search.

(C) The board will review the application, statements made by the applicant relating to criminal activity, criminal history record information, and will approve or disapprove the application as the evidence warrants. All applications disapproved under these conditions shall be scheduled for a hearing. If time[s] permits, the hearing will be conducted prior to the examination for which the application was made. If the hearing cannot be scheduled ten days prior to the date of the [uniform CPA] examination, the board may permit the applicant to write the examination and conduct the hearing after the examination has ended. In this case, the applicant must be notified that the grades earned on this examination may be voided depending on the outcome of the hearing.

Issued in Austin, Texas, on September 28, 1993.

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William Treacy
Executive Director
Texas State Board of
Public Accountancy

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For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.140

Certification by Reciprocity

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.140, concerning reciprocity from an approved state. The amendments clarify that reciprocity may be granted to an approved state. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.140. Application for Certification by Reciprocity from an [in] Approved State.

(a) The licensing authority of any state may submit to the board on an application form approved by the board, evidence of a certification and licensing process which is substantially equivalent to the certification and licensing process of the board. The board following its review of the application and determination that its process is substantially equivalent, may designate the state as an approved state.

(b) An individual holding a valid certificate and license in good standing as a certified public accountant in an approved state may be exempted from providing the evidence required in of §511.141(1)-(4) and (6) -(8) of this title (relating to Application for Certification by Reciprocity), and §511.142(a) and (b) of this title (relating to Qualifications for Certification by Reciprocity).

(c) The board may designate a state an approved state in part, and require an application for reciprocity to provide only

that information which the board determines is needed to produce a substantially equivalent certification and licensing process.

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William Treacy
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For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.141

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.141, concerning the requirements for application for certification by reciprocity. The amendment is designed to accommodate treaties entered into by the United States. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §13, which provide the board with the authority to promulgate rules regarding the issuance of certificates by reciprocity, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.141. Requirements for Application for Certification by Reciprocity. An individual holding a valid certificate and license in good standing as a certified public accountant or equivalent designation issued by any state or country may make application for certification as a certified public accountant in Texas. Further, the board may accept applications for issuance of a certificate by reciprocity to the extent required by treaties entered into by the government of the United States. The application must be on a form prescribed by the board and submitted to the executive director. The application must be accompanied by the requisite fee and shall include written authorization from the applicant empowering the board to obtain all information concerning the applicant's qualifications and present standing, and:

(1) interstate exchange of information form documenting the credits under the jurisdiction of the other state or country;

- (2) executed oath of office;
- (3) qualifying work experience commensurate with the applicable education requirements;
- (4) official transcripts;
- (5) recent photographs of the applicant;
- (6) character references, including current mailing address and phone number;
- (7) examination on the rules of professional conduct; and
- (8) FBI check-criminal background investigation.

Issued in Austin, Texas, on September 28, 1993.

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William Treacy
Executive Director
Texas State Board of
Public Accountancy

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Expiration date: January 28, 1994

For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.142

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §511.142, concerning qualifications for certification by reciprocity. The rule recognizes that some treaties entered into by the United States will affect reciprocity. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the board with the authority to administer examinations for Certified Public Accountants, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.142. *Qualifications for Certification by Reciprocity.*

(a) The board may issue a certificate of reciprocity to persons licensed and in good standing in any state of the United States or to the extent required by treaties entered into by the government

of the United States, provided that persons applying for such certificate shall: [Persons applying for a reciprocal certificate shall:]

- (1) be of good moral character (return FBI card, properly completed);
- (2) meet the current continuing education requirements for issuance of a certificate in Texas,
- (3) have successfully completed the examination on the rules of professional conduct;
- (4) have passed the reciprocal equivalency examination or Uniform CPA Examination prepared and graded by the American Institute of Certified Public Accountants; the grades on the examination must have been passing grades in Texas on the date the applicant passed the examination as documented on the interstate exchange of information form;
- (5) have completed the minimum education requirements equivalent to those in effect in this state when such original certificate was issued. The board shall test credits, diplomas, and degrees earned from institutions in the United States by standards applicable to education requirements for certification by examination. Credits, degrees, or diplomas earned in a foreign country shall be individually analyzed by the board; and

(6) submit, on a form prescribed by the board, evidence of the completion of experience meeting the current requirements for issuance of a certificate in Texas.

(b) The applicant may submit, on a form prescribed by the board, evidence of the completion of four years of public accounting experience obtained after passing the Uniform CPA Examination, if he or she does not meet the requirements of subsections (a)(5) or (6) of this section. This experience must have occurred within the ten years immediately preceding the date of application for certification by reciprocity.

(c)[(d)] A certificate of certified public accountant by reciprocity shall be issued if the board determines that all of the previously stated requirements have been satisfied.

[(c) The board may issue a certificate by reciprocity to the extent required by treaties entered into by the government of the United States.]

Issued in Austin, Texas, on September 28, 1993.

TRD-9329555

William Treacy
Executive Director
Texas State Board of
Public Accountancy

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Expiration date: January 28, 1994

For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.143

The Texas State Board of Public Accountancy repeals on an emergency basis §511.143, concerning the issuance of a certificate. This particular rule is no longer necessary because of the emergency adoption of other rules. The repeal is being simultaneously proposed for public comment in this issue of the *Texas Register*.

The rule is repealed on an emergency basis under Texas Civil Statutes, Article 41a-1, §13, which provide the Texas State Board of Certified Public Accountants with the authority to issue certificates by reciprocity, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§511.143. *Issuance of Certificate.*

Issued in Austin, Texas, on September 28, 1993.

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William Treacy
Executive Director
Texas State Board of
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Expiration date: January 28, 1994

For further information, please call: (512) 505-7066

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Chapter 521. Fee Schedule

• 22 TAC §521.2

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §521.2, concerning examination fees. The amendment applies a fee to reciprocal equivalency examinations. The amendment is being contemporaneously proposed for public comment in this issue of the *Texas Register*.

The emergency adoption is required by Federal law to accommodate the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX), which will be given nationally for the first time in November, 1993. CAQEX is the result of the North American Free Trade Agreement and subsequent agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §15, which provide the Texas State Board of Public Accountancy with the authority to assess and collect fees for examinations, and §6(a), which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary to carry in effect the purposes of the law.

§521.2. Examination Fees.

(a)[(b)] The following fees shall be effective for the May 1992 examination, and thereafter.

(1) The filing fee for initial examination applications shall be \$50. This is a non-refundable fee.

(2) The fee for the initial examination conducted pursuant to the Act shall be \$150. The fee for any subsequent examination shall be \$30 per subject. For the purposes of this section, accounting practice shall be deemed as two subjects.

[(a) The following fees shall be effective for the November 1991 examination.

(1) The fee for the initial examination conducted pursuant to the Public Accountancy Act of 1991 (the Act) shall be \$200, and \$50 of this amount is a non-refundable fee.

(2) The fee for any subsequent examination shall be \$30 per subject. For the purpose of this section, accounting practice shall be deemed as two subjects.]

(b) The fee for the reciprocal equivalency examination shall be \$400. This is a non-refundable fee and is not

inclusive of the fees for certification by reciprocity in §521.3 of this title (relating to Fee by Reciprocity).

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William Treacy
Executive Director
Texas State Board of
Public Accountancy

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For further information, please call: (512) 505-7066

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Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 78. Athlete Agents

Registration

- 1 TAC §§78.1, 78.11, 78.13, 78.21

The Office of the Secretary of State proposes new §78.13 and amendments to rules §§78.1, 78.11, and 78.21 concerning athlete agent registrations and renewals. The proposed new rule and amendments implement legislative changes enacted by the 73rd Legislative Session (1993). Section 78.13 specifies updates that must be filed by certain athlete agent entities. Section 78.1(d) specifies registration information pertaining to individual agents that must be filed by an athlete agent entity that is not an individual or sole proprietorship. Section 78.11(d) specifies similar information that must be filed by such entity when it renews its registration. Section 78.21(c) establishes the filing fee for the individual agents listed in the statements required by §78.1 and §78.11. Section 78.21(d) sets the filing fee for new individuals listed in the updates prescribed by §78.13.

Guy Joyner, staff attorney, has determined that for the first five-year period the proposed rule is in effect the fiscal implications for state government is an estimated increase of \$6,500 in filing fees for the first fiscal years 1994-1998. There will be no fiscal implications on local government.

Mr. Joyner 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 to make rules consistent with existing law and procedure. The economic cost to businesses that are required to comply with the sections as proposed is the filing fee for the individual agents. There is no anticipated additional economic cost to persons who are required to comply with the rule as proposed.

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

The new rule and amendments are proposed under the Government Code, §2001.004(1) and the Athlete Agents Act, Texas Civil Statutes, Article 8871, which provide the secretary of state with the authority to prescribe and adopt rules. The amendments implement

new subsections k, l, and m of Texas Civil Statutes, Article 8871, §2

§78.1. Registration of Athlete Agents.

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

(d) An agent that is a corporation, an association, a partnership, a limited liability company or other entity, and not an individual or sole proprietorship, shall file a statement setting forth the names and addresses of all individuals who will recruit or solicit an athlete to enter into an agent contract, a professional sports services contract, or a financial services contract with the agent. The statement shall be filed on a form prescribed by the secretary of state and available from the Statutory Documents Section referenced previously.

§78.11. Renewal for Registration of Athlete Agent.

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

(d) An agent that is a corporation, an association, a partnership, a limited liability company or other entity, and not an individual or sole proprietorship, shall file a statement with the renewal application setting forth the names and addresses of all individuals who will recruit or solicit an athlete to enter into an agent contract, a professional sports services contract, or a financial services contract with the agent. The statement shall be filed on a form prescribed by the secretary of state and available from the Statutory Documents Section referenced previously.

§78.13. Updates. An athlete agent entity that has filed a statement under §78.1(d) or §78.11(d) of this title (relating to Registration of Athlete Agents; Renewal for Registration of Athlete Agent) shall file an updated statement that reports any change in the individuals who recruit or solicit athletes on behalf of the entity. The statement shall be filed no later than the 30th day after the date the change occurs. It shall be on a form prescribed by the secretary of state and available from the Statutory Documents Section.

§78.21. Filing Fees.

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

(c) The fee for each individual that is listed in the statements described in §78.1(d) and §78.11(d) of this title (relating to Registration of Athlete Agents; Renewal for Registration of Athlete Agent) is \$100.

(d) The fee for each individual listed in the update described in §78.13 of this title (relating to Updates) who was not reported in the entity's most recent prior statement, is \$100.

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 October 1, 1993.

TRD-9329688

Audrey Seiden
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 463-5570

TITLE 7. BANKING AND SECURITIES

Part III. State Banking Board

Chapter 31. Miscellaneous

- 7 TAC §31.5

The State Banking Board of Texas proposes an amendment to §31.5, concerning substitute members of the State Banking Board. Texas Civil Statutes, Article 342-115, provide that the Deputy Treasurer and the Deputy Banking Commissioner may substitute at State Banking Board meetings for the State Treasurer and the Banking Commissioner, respectively, but only if identified by name in an enabling rule. The proposed amendment identifies the current Deputy Banking Commissioner.

Brian R. Herrick, assistant general counsel, Texas Department of Banking, 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. Herrick 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 ability of the Board to conduct official meetings in the absence of either the State Treasurer or the Texas Banking Commissioner. 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 Brian R. Herrick, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 342-115, which provide the State Banking Board with the authority to prescribe by rule the individual who is authorized to sit as a substitute member of the Board when the State Treasurer or the Banking Commissioner is unable to personally attend an official meeting of the State Banking Board.

The following are the articles and sections that are affected by the rule: Texas Civil Statutes, Article 342-115.

§31.5. Members of the Board. When either the state treasurer or commissioner is unable to personally attend an official meeting of the board, the respective first deputy of such member may appear and vote. The present first deputy to the treasurer is Paul J. Williams, deputy treasurer, and the present deputy to the commissioner is Randall S. James [Stephen Y. Scurlock], deputy banking commissioner. Two such deputies may not sit as substitute members of the board at the same time.

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 28, 1993.

TRD-9329602
Everette D Jobe
General Counsel
Texas Department of
Banking

Earliest possible date of adoption: November 8, 1993

For further information, please call. (512) 475-1300

Chapter 35. Rulemaking

• 7 TAC §35.6

The State Banking Board of Texas proposes new §35.6, concerning the nonexclusive delegation of Board authority to the Banking Commissioner to initiate rulemaking proceedings by proposing rules for publication and public comment on behalf of the Board. Because the

Board is a part-time body that meets sporadically, the process of proposal and adoption of regulations consumes an inordinate amount of time. On at least one occasion, a proposed section that received no adverse comment expired by operation of law. The proposed section will allow the Banking Commissioner to propose but not adopt rules on behalf of the Board to enable the Board to function more efficiently and effectively in this regard

Everette D Jobe, general counsel, Texas Department of Banking, 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 Jobe 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 enhanced efficiency of the Board to conduct rulemaking proceedings by eliminating the necessity to call Board meetings for the sole purpose of considering proposed rules. 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 Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294

The amendment is proposed under the Texas Government Code, §2001.004, and Texas Civil Statutes, Article 342-115(6), which provide the State Banking Board with the authority to prescribe such rules of practice as may be necessary to facilitate the business to come before it

The following are the articles and sections that are affected by the rule: Texas Civil Statutes, Article 342-115

§35.6. Nonexclusive Delegation of Authority to Propose Rules

(a) The State Banking Board hereby delegates to the Banking Commissioner the nonexclusive authority on behalf of the Board to initiate rulemaking proceedings, by proposing sections and holding hearings for the purpose of receiving comments on proposed sections, as the Commissioner from time to time deems appropriate, including rulemaking proceedings urged by petition of interested persons. The Board reserves the exclusive power to conclude rulemaking proceedings by adopting or refusing to adopt sections and may, as it deems appropriate, initiate rulemaking proceedings

(b) If the Commissioner chooses to initiate rulemaking proceedings by proposing sections for publication and comment, the Commissioner shall on or before publication notify the members of the Board of the proposed rulemaking action and the justification for the proposed action in writing

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 28, 1993.

TRD-9329601
Everette D Jobe
General Counsel
Texas Department of
Banking

Earliest possible date of adoption: November 8, 1993

For further information, please call. (512) 475-1300

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

• 22 TAC §§213.1-213.22

(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 Board of Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Nurse Examiners proposes the repeal of §§213.1-213.22, concerning Practice and Procedure. Extensive rewrite of the section is necessary; therefore, the sections are being repealed and replaced with proposed new sections.

Louise Waddill, Ph.D., R.N., executive director, 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

Dr. Waddill 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 clarification by omission. 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 Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714

The repeals are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it

§213.1 Definitions

§213.2 Filing of Documents

§213.3 Computation of Time

§213.4. Service of Notice.

§213.5. Motion for Continuance.

§213.6. Witness Fees and Expenses.

§213.7. Preliminary Notice to Respondent.

§213.8. Commencement of Disciplinary Proceedings and Filing of Charges.

§213.9. Respondent's Answer.

§213.10. Depositions.

§213.11. Subpoenas.

§213.12. Hearing Procedure.

§213.13. Decision of board.

§213.14. Rescission of Probation.

§213.15. Hearings before Executive Director.

§213.16. Prehearing Conference.

§213.17. Agreed Orders.

§213.18. Reinstatement Process.

§213.19. Licensure of Persons with Criminal Convictions.

§213.20. Licensure of Persons who have Physical or Mental Disability/Illness, or Who are Chemically Dependent.

§213.21. Declaratory Order of Eligibility for Licensure.

§213.22. Representation.

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 30, 1993.

TRD-9329685

Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: November 17, 1993

For further information, please call: (512) 835-8650

• 22 TAC §§213.1-213.31

The Board of Nurse Examiners proposes new §§213.1-213.31, concerning Practice and Procedure. Statutory changes by the 73rd Legislature, specifically House Bill 756 and House Bill 2180 require substantial changes in the Board's rules relating to disciplinary matters. The new rules address the mandated timeline and disposition of preliminary matters. Provisions are retained for the executive director to require pre-docketing hearings.

Louise Waddill, Ph.D., R.N., executive 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.

Ms. Waddill also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased opportunity for informal settlement of a case without the need for a costly administrative hearing; increased opportunity for complainants to be involved in the hearing process; defined timelines will give all parties a better idea of the amount of time involved. Monitoring the disciplinary process will continue. 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 Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714.

The new sections are proposed under Texas Civil Statutes, Article 4514, §1 which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Act-The Nursing Practice Act, Texas Civil Statutes, Articles 4513-4528, sometimes also called the NPA.

Address of record-The address of each licensee as provided to the Board of Nurse Examiners pursuant to §217.10 of this title (relating to Change of Name and/or Address).

Adverse licensure action-Any action to revoke, suspend, or otherwise discipline, sanction, or limit a license.

ALJ-The Administrative Law Judge-A person who presides at an administrative hearing held by SOAH under APTRA.

APTRA-The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a and its subsequent amendments. Recodified as the "APA, Administrative Procedures Act," §2001.001, et seq, Texas Government Code (Vernon, 1993.)

Board-The Board of Nurse Examiners appointed pursuant to Texas Civil Statutes, Article 4513. For purposes of this section et seq, "Board" includes a three member standing committee designated by the Board to determine matters of eligibility for licensure and discipline of licensees.

Complaint form-A standard form designed to collect at least the following information: RN/Respondent Name, License Number, Social Security Number, Date of birth, Employer, Dates of Occurrence(s), Description of Facts or Conduct, Witnesses, Outcome, Complainant Identification (Name, Address, and Telephone Number), and Written Instructions for providing information to the Board.

Contested case-A proceeding, including, but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

Declaratory order-An order issued by the Board determining the eligibility of an individual for initial licensure as a registered nurse.

Eligibility and Disciplinary Committee-A three member committee, a majority of whom shall be RNs, authorized by the Board to make a final disposition of licensure eligibility and disciplinary matters including temporary suspension.

Executive Director-The executive director of the Board of Nurse Examiners.

License-Includes the whole or part of any board permit, certificate, approval, registration, or similar form of permission required by law.

Licensing-Includes the Board's process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

May-Discretionary requirement.

Order-A written decision of the Board, regardless of form, signed by the executive director.

Party-A person or state agency named or admitted as a party.

Person-An individual, client, patient, or member of the public together with his/her family and significant others, as well as an entity defined by APTRA as a "person."

Petitioner-A party, including the board, who brings a request or action and assumes the burden of going forward with an administrative proceeding; e.g., the Board in an action to discipline a licensee, the person who seeks reinstatement of a license, or the person who seeks a determination of eligibility for licensure.

Reinstatement-Restoring a disciplined license to active or unencumbered status.

Reissuance-Reinstatement.

Respondent-A party, including the board, to whom a request is made or against whom an action is brought, e.g.; the li-



censee in a disciplinary action by the Board; the Board in a reinstatement action; or the Board in an action to determine eligibility for licensure.

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. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

Shall—Mandatory requirements.

SOAH—The State Office of Administrative Hearings.

Staff—The investigative staff of the Board of Nurse Examiners and does not include the executive director. For purposes of these rules, the staff may act through the legal counsel to the Board.

§213.2. Construction. Unless otherwise expressly provided, the past, present, or future tense shall each include the other; the masculine, feminine, or neuter gender shall each include the other; and the singular and plural number shall each include the other.

§213.3. Pleading.

(a) In disciplinary matters. In actions by the Board as petitioner against a licensee subject to the Board's jurisdiction as respondent, the Board's pleading shall be styled "Formal Charges." Except in cases of temporary suspension and injunction, formal charges shall not be filed absent notice of the facts or conduct alleged to warrant the intended action and opportunity for the licensee to show compliance with the law for retention of the license as provided in the Administrative Procedures Act, Texas Government Code, §2001.054(c).

(b) In nondisciplinary matters.

(1) In actions by the Board as petitioner to enforce and regulate matters within its power and authority, the Board's pleading shall be styled "Petition of the Board of Nurse Examiners."

(2) In actions by a person as petitioner (e.g., non-licensed individual seeking a determination of eligibility for licensure, examination or licensure applicant, or an individual seeking reissuance of a surrendered, revoked or suspended license) against the Board as respondent, the person's pleading shall be styled "Petition of NAME." The person shall have the burden of initiating the action, going forward with the administrative proceeding and proving the allegations contained in the pleading except where the Board is obligated to give notice of and prove its basis for refusal or denial of a license, permit, application, or petition. In such cases, the Board shall give written notice of the basis

of its refusal or denial and shall have the burden of proving that basis at an administrative hearing. The Board may file an answer incorporating this notice or it may rely on the notice in lieu of a responsive pleading.

§213.4. Representation. Any representative for any party appearing for any proceeding before the agency must be an attorney licensed to practice law.

§213.5. Appearance.

(a) The Board may require that written testimony be prefiled by any person appearing at a board meeting.

(b) In disciplinary and eligibility matters, any person appearing before the Board shall prefile written testimony not less than 14 days before the meeting.

§213.6. Agreements in Writing. Unless otherwise provided by the NPA or these rules, no agreement between attorneys or parties concerning any action or matter pending before the Board will be enforced unless it is in writing, signed, and filed with the papers as a part of the record, or unless it is made in open hearing and entered of record.

§213.7. Final Disposition. No agreed order shall be final or effective until approved by the Board.

§213.8. Filing of Documents. All applications, petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the Board or the Administrative Law Judge shall be filed with the executive director. They shall be deemed filed only when actually received.

§213.9. Computation of Time.

(a) Computing time. In computing any period of time prescribed or allowed by these rules, by order of the Board, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(b) Extension. Unless otherwise provided by statute, the time for filing any pleading, motion, or request may be extended by order of the executive director, upon written motion filed prior to the expiration of the applicable period of time for the filing of the same, showing that the need for extension is not caused by the

neglect, indifference, or lack of diligence of the requesting party.

§213.10. Notice and Service. Notice must be in writing and addressed to the party. Notice to a licensee is effective and service is complete when sent by registered or certified mail to the licensee's address of record.

§213.11. Motion for Continuance.

(a) A continuance may be granted by the executive director upon the filing of a written motion and affidavit complying with the requirements of subsection (b) of this section; provided, however, that no motion for continuance shall be granted by the executive director unless filed at least three days prior to the hearing before an Administrative Law Judge.

(b) The motion shall be supported by a sworn affidavit detailing the reasons for the continuance.

(1) If the ground of such application be the want of testimony, the party requesting the continuance shall make affidavit that such testimony is material, showing the materiality thereof, and that he or she has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; and that such testimony cannot be procured from any other source.

(2) If it be for the absence of a witness, the party requesting the continuance shall state the name and residence of the witness, and what the party requesting the continuance expects to prove by such witness. The affidavit shall also state the continuance is not sought for delay only, but that justice be done.

(3) If it be for the reason of a conflicting setting, the party requesting the continuance shall identify the conflict by style, cause number, court, agency, nature of setting, and date the conflicting setting was made.

§213.12. Witness Fees and Expenses. A witness who is not a party to the proceeding and who is subpoenaed to appear at a deposition or hearing or to produce books, papers, or other objects, shall be entitled to receive reimbursement for expenses incurred in complying with the subpoena, either the minimum as set in the Administrative Procedures Act or the State of Texas Travel Allowance Guide issued by the Comptroller of Public Accounts, whichever is greater.

§213.13. Complaint Investigation and Disposition.

(a) Complaints shall be made in writing on an agency form designed to elicit at least the information set out in §213.1 of

this title (relating to Definitions). Complainants shall be invited to explain their allegations.

(b) A preliminary investigation shall be conducted to determine the identity of the person named or described in the complaint.

(c) Complaints shall be assigned a priority status as follows:

(1) those indicating that credible evidence exists showing a violation of the Nursing Practice Act (NPA) involving actual deception, fraud or injury to clients or the public or a high probability of immediate deception, fraud, or injury to clients or the public;

(2) those indicating that credible evidence exists showing a violation of the NPA involving a high probability of potential deception, fraud, or injury to clients or the public;

(3) those indicating that credible evidence exists showing a violation of the NPA involving a potential for deception, fraud, or injury to clients or the public;

(4) all other complaints.

(d) Not later than the 30th day after a complaint is received, the staff shall place a timeline for completion, not to exceed one year, in the investigative file and notify all parties to the complaint. Any change in timeline must be noted in the file and all parties notified of the change not later than seven days after the change was made. For purposes of this rule, completion of an investigation in a disciplinary matter occurs when:

(1) staff determines there is insufficient evidence to demonstrate a violation of the NPA, board rules or a board order; or

(2) staff determines there is sufficient evidence to demonstrate a violation of the NPA, board rules or a board order and drafts proposed formal charges.

(e) The staff shall provide summary data of complaints extending beyond the complaint timeline to the executive director.

§213.14. Preliminary Notice to Respondent in Disciplinary Matters.

(a) Prior to commencing disciplinary proceedings under §213.15 of this title (relating to Commencement of Disciplinary Proceedings), the staff shall serve the respondent with written notice in accordance with the Texas Government Code, §2001.054(c).

(b) Such notice shall contain a statement of the facts or conduct alleged to warrant an adverse licensure action. The notice shall invite the respondent to show

compliance with all requirements of the law for retention of the license.

(c) Respondent shall have not less than ten days to respond in writing.

§213.15. Commencement of Disciplinary Proceedings.

(a) If a complaint is not resolved informally, the staff may commence disciplinary proceedings by filing written charges.

(b) The charges shall contain the following information:

(1) the name of the respondent;

(2) a statement of the conduct alleged to be in violation of the Act or of a rule, regulation, or order of the Board; and

(3) a reference to the section of the Act or to the board rule, regulation, or order which respondent is alleged to have violated.

(c) When the charges are filed, the executive director shall serve the respondent with a copy of the charges and with a notice of informal conference or notice of hearing which shall state the date, time, and location of the conference or hearing at which the charges will be considered. The notice of informal conference or notice of hearing shall also state that the respondent may file a written answer to the charges meeting the requirement of §213.16 of this title (relating to Respondent's Answer in a Disciplinary Matter). The executive director shall enclose with the charges a copy of the rules governing disciplinary proceedings.

(d) The staff may amend the charges at any time permitted by APTRA. A copy of any written amended charges shall be served on the Respondent. The first charges filed shall be entitled "charges," the first amended charges filed shall be entitled "first amended charges," and so forth.

(e) Charges may be resolved by agreement of the parties at any time.

§213.16. Respondent's Answer in a Disciplinary Matter.

(a) The respondent in a disciplinary matter may file an answer to the charges and to every amendment thereof.

(b) The answer shall admit or deny each of the allegations in the charges or amendment thereof. If the respondent intends to deny only a part of an allegation, the respondent shall specify so much of it is true and shall deny only the remainder. The answer shall also include any other matter, whether of law or fact, upon which respondent intends to rely for his or her defense.

(c) The respondent may amend his or her answer at any time permitted by the Administrative Procedures Act.

(d) The first answer filed shall be entitled "answer," the first amended answer filed shall be entitled "first amended answer," and so forth.

§213.17. Discovery.

(a) Parties to administrative proceedings shall have reasonable opportunity and methods of discovery described in the Texas Rules of Civil Procedure. Matters subject to discovery are limited to those which are relevant and material to issues within the Board's authority as set out in Texas Civil Statutes, Article 4513, et seq.

(b) Parties are encouraged to make stipulations of evidence where possible and to agree to methods and timelines to expedite discovery and conserve time and resources.

§213.18. Depositions.

(a) The deposition of any witness may be taken upon a commission issued by the executive director upon the written request of the staff or the respondent, a copy of which shall be served on the non-requesting party.

(b) The written request shall contain the name, address, and title, if any, of the witness; a description of the books, records, writings, or other tangible items the requesting party wishes the witness to produce at the deposition; the date and location that the requesting party wishes the deposition to be taken; and a statement of the reasons why the deposition should be taken and the items produced.

(c) Depositions may be taken by telephone and by non-stenographic recording. The recording or transcript thereof may be used by any party to the same extent as a stenographic deposition, provided all other parties are supplied with a copy of the recording and the transcript to be used. The witness in a telephonic or non-stenographic deposition may be sworn by any notary. The transcript of such deposition shall be certified by the witness.

(d) The cost of the original transcription of the deposition and the fee and expenses described in §213.12 of this title (relating to Witness Fees and Expenses), shall be borne by the party requesting the deposition.

§213.19. Subpoenas.

(a) Upon the written request of the staff or the respondent, the executive director may issue a subpoena to require the attendance of witnesses or the production of books, records, papers, or the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) If the subpoena is for the attendance of a witness, the written request shall contain the name, address, and title, if any, of the witness and the date upon which and the location at which the attendance of the witness is sought. If the subpoena is for the production of books, records, writings, or other tangible items, the written request shall contain a description of the item sought; the name, address, and title, if any, of the person or entity who has custody or control over the items and the date on which and the location at which the items are sought to be produced. Each request, whether for a witness or for production of items, shall contain a statement of the reasons why the subpoena should be issued.

(c) Upon a finding that the respondent or staff has shown good cause for the issuance of the subpoena, the executive director shall issue the subpoena in the form described in Texas Government Code, §2001.089, (Vernon 1993).

(d) Notwithstanding any other provisions of these sections, the executive director may issue a subpoena prior to the filing of charges under §213.15 of this title (relating to Commencement of Disciplinary Proceedings), if, in the opinion of the executive director, such a subpoena is necessary to investigate any potential violation or lack of compliance with Texas Civil Statutes, Articles 4513-4528, or the rules, regulations, or orders of the Board. The subpoena may be to compel the attendance of any person to appear for the purposes of giving sworn testimony and/or to compel the production of books, records, papers, or other objects.

§213.20. *Informal Proceedings.*

(a) Any matter within the Board's jurisdiction may be resolved informally by stipulation, agreed settlement, consent order, or default.

(b) In disciplinary matters, the Board shall offer the complainant and the licensee the opportunity to be heard. The offer may be made at any time prior to disposition and may be included on the Board's complaint form, on any notice required by statute or these rules, or otherwise.

(c) Informal proceedings may be conducted in person, by attorney, or by electronic, telephonic, or written communication.

(d) Informal conferences may be conducted at any time by the executive director or designee.

(e) The Board's counsel or assistant attorney general shall participate in informal proceedings.

(f) In an effort to bring about a prompt solution to eligibility and disciplin-

ary matters without a formal hearing, the staff shall provide evidence constituting the basis for its position on eligibility or substantiating a complaint; and shall accept relevant and material information from any party or interested person.

(g) Disposition of matters considered informally may be made at any time in an agreed order containing such terms as the executive director may deem reasonable and necessary. Said agreed order shall not be final and effective until the Board, or an eligibility and disciplinary committee, votes to accept the proposed disposition.

(h) If eligibility matters are not resolved informally, the applicant may obtain an administrative hearing by filing a petition with the executive director, requesting to be docketed for a hearing at State Office of Administrative Hearings (SOAH), and paying the appropriate fees.

(i) If disciplinary matters are not resolved informally, or if the Board rejects a proposed disposition, the staff may file charges pursuant to §213.15 of this title (relating to Commencement of Disciplinary Proceedings), and docket the matter at SOAH.

(j) Predocketing conferences may be conducted by the executive director prior to a hearing before an Administrative Law Judge. The executive director, unilaterally or at the request of any party, may direct the parties, their attorneys or representatives to appear before the executive director at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) simplifying the issues;
- (2) considering the making of admissions or stipulations of fact or law;
- (3) reviewing the procedure governing the hearing;
- (4) limiting, where possible, the number of witnesses whose testimony will be repetitious; and
- (5) doing any act that may simplify the proceedings, and disposing of the matters in controversy, including settling all or part of the issues as in dispute pursuant to §213.20 and §213.21 of this title (relating to Informal Proceedings and Agreed Disposition).

§213.21. *Agreed Disposition.* Informal proceedings, complaints and charges may be resolved by stipulation, agreed settlement, agreed order, or dismissal pursuant to Texas Civil Statutes, Article 4525.3.

§213.22. *Hearing Procedure.*

(a) The State Office of Administrative Hearings (SOAH) shall conduct all administrative hearings in contested cases under APA that are before the Board.

(b) Transcription of hearing. Each hearing will be recorded by a court reporter.

(1) The cost of the transcription shall be borne by the person making the request.

(2) A party who appeals a final decision of the Board shall pay all of the cost of preparation of the original and any certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

§213.23. *Decision of the Board.*

(a) The Board may act through a standing three member committee in all matters relating to the grant or denial of a license or permit, discipline, temporary suspension, administrative, or civil penalties.

(b) Based on the evidence presented, whether in the form of disposition papers from an informal settlement, the administrative transcript or the proposal for decision submitted by an Administrative Law Judge (ALJ) (including any written requests for exceptions to such proposal), the Board may:

- (1) change a finding of fact or conclusion of law, or vacate or modify an order of the ALJ only to the extent permitted by APA;
- (2) adopt the findings, conclusions of the ALJ;
- (3) adopt and ratify the order proposed by the ALJ;
- (4) order any remedy, penalty, or sanction authorized by the Nursing Practice Act (NPA);
- (5) find that the charges have not been substantiated;
- (6) refuse to admit persons to its examinations;
- (7) refuse to issue a license or certificate of registration or to issue a certificate of reregistration; or
- (8) refuse to issue a temporary permit.

(c) The decision of the Board shall be in writing and shall be signed by the executive director.

(d) A copy of the order shall be mailed or delivered to the respondent, the respondent's last known employer as a professional nurse, and the respondent's attorney.

(e) The decision of the Board is final and appealable upon the signing of the written order as provided in subsection (c) of this section where:

(1) the Board finds and states in the order that an imminent peril to the

public health, safety, and welfare requires immediate effect of the order; and

(2) the order states it is final and effective on the date rendered.

(f) A motion for rehearing shall not be a prerequisite for appeal of the decision where the order of the Board contains the finding set forth in subsection (e) of this section.

§213.24. Rescission of Probation.

(a) At least 20 days prior to a hearing to rescind probation, the probationer shall be served with written notice of the allegations supporting rescission of the probation.

(b) The hearing shall be conducted in accordance with §213.22 of this title (relating to Hearing Procedure), and the decisions of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of Board).

§213.25. *Administrative Hearings.* Formal hearings in contested cases shall be conducted by an ALJ assigned by State Office of Administrative Hearings. A person may obtain a hearing by making a written request to the Board and paying any required fees.

§213.26. *Schedule of Sanctions.* The sanctions set out in the Nursing Practice Act are adopted and State Office of Administrative Hearings shall use such sanctions.

§213.27. *Monitoring.* The Board shall identify and monitor licensees who present a risk to the public and who are subject to board orders. The monitoring system shall track at least the name, license number, address, employer, and any other information necessary to demonstrate compliance or non-compliance with an order of the Board.

§213.28. Reissuance of a License.

(a) A person whose license to practice professional nursing in this state has been revoked, suspended, or surrendered, may apply for reissuance of the license. In case of revocation, petition shall not be made prior to one year after the effective date of the revocation. The Board may approve or deny a petition. In case of denial, the Board may set a reasonable time that must elapse before another petition may be filed. The Board may impose reasonable conditions that a petitioner must satisfy before reissuance an unrestricted license.

(b) A petition for reissuance shall be in writing and in the form prescribed by the Board.

(c) Petitioner's appearance at any hearing concerning reissuance of a license shall be in person.

(d) The burden of proof is on the petitioner to prove present fitness to practice as well as compliance with all terms and conditions imposed as a part of any revocation, surrender, or suspension. A reissued license may be limited or a stipulated license may be issued. If petition for reissuance is denied, petitioner may request an Administrative Law Judge hearing.

(e) In considering reissuance of a surrendered, suspended or revoked license, the Board will evaluate:

(1) the act or condition which resulted in voluntary surrender, suspension, or revocation of the license;

(2) the conduct of the petitioner subsequent to the suspension, revocation, or acceptance of surrender of license;

(3) the lapse of time since suspension, revocation, or acceptance of surrender;

(4) compliance with all conditions imposed by the Board as a prerequisite for issuance of the license; and

(5) the petitioner's present qualification to practice professional nursing based on his/her history of nursing related employment or education.

§213.29. Licensure of Persons with Criminal Convictions.

(a) This section sets out the guidelines and criteria on the eligibility of persons with criminal convictions to obtain a license as a registered nurse. The Board may refuse to admit persons to its licensure examinations, may refuse to issue a license or certificate of registration, or may refuse to issue a temporary permit to any individual that has been convicted of a felony, a misdemeanor involving moral turpitude, or engaged in conduct resulting in the revocation of probation imposed pursuant to such conviction.

(b) The practice of nursing involves clients, their families and significant others and the public in diverse settings. The registered nurse practices in an autonomous role with individuals who are physically, emotionally, and financially vulnerable. The nurse has access to personal information about all aspects of a person's life, resources, and relationships. Therefore criminal behavior, whether violent or non-violent, directed against persons, property, or public order and decency is considered by the Board as highly relevant to an individual's fitness to practice nursing.

(c) In considering whether a criminal conviction renders the individual inelig-

ible for licensure as a registered nurse, the Board shall consider:

(1) the knowing or intentional practice of professional nursing without a license issued under the Nursing Practice Act;

(2) any felony or misdemeanor involving moral turpitude;

(3) the nature and seriousness of the crime;

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

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

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

(d) In addition to the factors that may be considered under subsection (c) of this section, the Board, in determining the present fitness of a person who has been convicted of a crime, shall consider:

(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: prosecutorial, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff or chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(e) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act; the applicant shall also furnish proof in such form as may be required by the licensing authority that he or she has maintained a record of steady employment and has supported his or her dependents and has 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.

§213.30. Licensure of Persons with Disability/Illness or Intemperate Use.

(a) This section sets out the guidelines and criteria on the eligibility of persons with mental or physical disability/illness and/or intemperate use of drugs/alcohol to obtain a license as a registered nurse.

(b) In evaluating a person with a disability/illness, the Board shall consider the nature and seriousness of the disability/illness and the likelihood of the condition adversely affecting the safe practice of professional nursing. A person with a disability/illness shall provide the Board, at the time of application, evidence of evaluation by a licensed health care provider acceptable to the Board.

(c) In evaluating a person with a history of the intemperate use of drugs or alcohol, the Board shall consider the likelihood of the condition adversely affecting the safe practice of professional nursing. A person with a history of intemperate use shall provide the Board, at the time of application, evidence of evaluation by a health care provider acceptable to the Board, evidence of treatment, aftercare, relapse prevention, and support group attendance.

§213.31. Declaratory Order of Eligibility for Licensure.

(a) An individual enrolled or planning to enroll in a basic nursing program who has reason to believe that he/she is ineligible for licensure may petition the Board for a declaratory order as to his/her eligibility.

(b) The individual must submit a petition on forms provided by the Board which includes:

(1) a statement by the individual indicating the reason(s) and basis of potential ineligibility;

(2) if the potential ineligibility is due to criminal conviction, any court documents including, but not limited to, any indictments, judgments, probation records, and evidence of completion of probation, if applicable;

(3) if the potential ineligibility is due to mental illness, evidence of evaluation, including a prognosis, by a psychologist or psychiatrist, evidence of treatment, including any medication;

(4) if the potential ineligibility is due to chemical dependency including alcohol, evidence of evaluation and treatment, after care and support group attendance; and

(5) the required fee.

(c) An investigation of the petition and the individual's eligibility may be conducted.

(d) The petitioning individual or the Board may amend the petition at any time before a final determination is made.

(e) If the Board proposes to find the petitioning individual ineligible for licensure, he/she is entitled to a prehearing conference or a hearing before an Administrative Law Judge.

(f) In the absence of new evidence known to but not disclosed by the petitioning individual or not reasonably available to the Board at the time the declaratory order is issued, the Board's ruling on the petition is final.

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 30, 1993.

TRD-9329686 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Proposed date of adoption: November 17, 1993

For further information, please call: (512) 835-8650

◆ ◆ ◆
Chapter 222. Advanced Nurse Practitioners Carrying Out Prescription Drug Orders

• 22 TAC §222.3

The Board of Nurse Examiners proposes an amendment to §222.3, concerning Advanced Nurse Practitioners Carrying Out Prescription Drug Orders, Functions. House Bill 756, passed during the 73rd Legislative Session, amended the definition of professional nursing which applies to ANP's approved by the Board for limited prescriptive authority as authorized by House Bill 18, Omnibus Rural Health Rescue Act of 1989.

Louise Waddill, Ph.D., R.N., executive director, 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.

Dr. Waddill 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 to clarify the intent that only advanced nurse practitioners approved by the Board for limited prescriptive authority may request, receive, sign for, and distribute professional drug samples. 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 Louise Waddill, Ph.D., R.N. executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714.

The amendment is proposed under Texas Civil Statutes, Article 4514, §1 which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§222.3. Functions.

(a)-(d) (No change.)

(e) The ANP with a valid identification number and meeting all requirements according to subsection (a) of this section may request, receive, sign for, and distribute professional drug samples.

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 30, 1993.

TRD-9329684 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: November 17, 1993

For further information, please call: (512) 835-8650

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Chapter 223. Fees

• 22 TAC §223.1

The Board of Nurse Examiners proposes an amendment to §223.1, concerning Fees. House Bill 756 and House Bill 2180, passed during the 73rd Legislative Session, provide for the issuance of a temporary license; combine the endorsement and temporary license fee; negate the temporary permit for endorsement applicants, and authorize the Board to issue a RN Retiree license. Modifications were also made to the NPA regarding the hearing procedures. The board is proposing a fee change to conform to these changes.

Glenn Parker, chief fiscal officer, 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 effect on state government for the first five-year period the section is in effect will be an estimated increase of \$8,500 in 1994; \$6,500 in 1995; \$6,500 in 1996; \$6,500 in 1997; and \$6,500 in 1998.

The amendment is promulgated under the authority of the Texas Tax Code, Title 2; therefore, no analysis of the effect on small businesses is required.

Louise Waddill, Ph.D., R.N., executive director has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will not be applicable, as

the public is relatively unaffected by the proposed amendment. The anticipated economic cost to persons who are required to comply with the amendment as proposed will be: Those nurses seeking licensure by endorsement will pay \$75 rather than \$60. Potential candidates for nursing licensure with criminal backgrounds or a history of substance abuse will be required to pay a \$100 fee to have the Board determine their eligibility for licensure. If a hearing before the ALJ in the SOAH is requested by the applicant, a \$600 docketing fee is required. Inactive RNs who are 65 years or older have the option of obtaining an RN Retired Certificate for \$10.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714.

The amendment is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§223.1. Fees. The Board of Nurse Examiners has established reasonable and necessary fees for the administration of its functions in the following amounts:

- (1)-(4) (No change.)
- (5) endorsement-\$75 [\$60];
- (6)-(14) (No change.)
- (15) declaratory order of eligibility-\$100; [\$25]
- (16) docketing fee in non disciplinary matters-\$600; and
- (17) Registered Nurse, Retired-\$10.

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 30, 1993.

TRD-9329683 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: November 17, 1993

For further information, please call: (512) 835-8650

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Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

General Information

• 22 TAC §511.11

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent

adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes new §511.11, concerning definitions. The new rule expands the definition of "examination" and "applicant" to accommodate new examinations commencing in November, 1993. The new rule is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329579 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

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Certification By Examination

• 22 TAC §511.28

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment to §511.28, concerning examination fees. The amendment extends examination fees to certain uniform examinations. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329581 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

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CPA Examination

• 22 TAC §511.60

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes new §511.60, concerning the Canadian Chartered Accountant Uniform Qualification Examination (CAQEX). The new rule recognizes CAQEX, which is scheduled to commence in November, 1993. The new section is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The new rule is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329582

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.69

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes new §511.69, concerning non-disclosure of examinations. The new rule clarifies that examinations are not be disclosed to anyone. The new rule is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rule that is consistent with the American Institute of Certified Public Accountants examination security policies. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The new rule is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide

the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 29, 1993.

TRD-9329557

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

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• 22 TAC §511.73

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes new §511.73, concerning the Canadian Chartered Accountant Uniform CPA Qualification Examination (CAQEX). The new rule recognizes CAQEX and the subjects to be tested by CAQEX. The new section is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The new rule is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329585

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.76

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment to §511.76, concerning refund policy. The amendment is necessary to conform with Federal law. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that clarify the board's examination fee refund policies and procedures. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329587

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

◆ ◆ ◆
• 22 TAC §511.78

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an

emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment §511. 78, concerning inspection of questions and answers. The amendment allows applicants to review their answers to uniform examinations. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1 §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329577 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066



• 22 TAC §511.80

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment to §511.80, concerning uniform examinations. The amendment recognizes uniform examinations. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329589 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066



Examination Investigation and Board Action

• 22 TAC §511.102

The Texas State Board of Public Accountancy proposes an amendment to §511.102, concerning the filing of complaints. The amendments extend the procedures for the filing of a complaint regarding the eligibility of an examination applicant to applicants for uniform examinations. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329591 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066



• 22 TAC §511.103

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment §511.103, concerning action relating to moral character. The amendments extend the procedures for action relating to the moral character of an examination applicant to applicants for uniform examinations. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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 this section.

Mr. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329593 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

• 22 TAC §511.104

The Texas State Board of Public Accountancy proposes an amendment to §511.104, concerning action relating to unusual

similarities involving the uniform CPA examination. The amendments extend the procedure inquiring into unusual examination similarities. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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 this section.

Mr. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The rule is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329596 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

• 22 TAC §511.105

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment to §511.105, concerning the confidentiality of examination applicant's files. The amendments extend confidentiality to a uniform examination applicant's files. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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 this section.

Mr. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329595 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

• 22 TAC §511.106

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment to §511.106, concerning examination hearings. The amendments extend the procedures for examination hearings to uniform examinations. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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 this section.

Mr. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329568

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

Certification By Reciprocity

• 22 TAC §511.140

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment to §511.140, concerning reciprocity from an approved state. The amendments clarify that reciprocity may be granted to an approved state. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329569

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

• 22 TAC §511.141

(Editor's Note: The Texas State Board of Public Accountancy proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas State Board of Public Accountancy proposes an amendment to §511.141, concerning the requirements for application for certification by reciprocity. The rule is designed to accommodate treaties entered into by the United States. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules consistent with treaties entered into by the United States. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §13, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the issuance of certificates by reciprocity.

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 28, 1993.

TRD-9329598

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

• 22 TAC §511.142

The Texas State Board of Public Accountancy proposes an amendment to §511.142, concerning qualifications for certification by reciprocity. The rule recognizes that some treaties entered into by the United States will affect reciprocity. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 28, 1993.

TRD-9329558

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

• 22 TAC §511.143

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

The Texas State Board of Public Accountancy proposes the repeal of §511.143, concerning the issuance of a certificate. This particular rule is no longer necessary because of the emergency adoption of other rules. The repeal is being simultaneously

adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701-3942.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding CPA examination.

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 29, 1993.

TRD-9329565
William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

Chapter 521. Fee Schedule

• 22 TAC §521.2

The Texas State Board of Public Accountancy proposes an amendment to §521.2, concerning examination fees. The amendment applies a fee to reciprocal equivalency examinations. The amendment is being simultaneously adopted on an emergency basis in this issue of the *Texas Register*.

William Treacy, executive director, 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. Treacy 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 rules that are consistent with agreements between the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants. 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 J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe Street, Tower III, Suite 900, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §15, which provide the Texas State Board of Public Accountancy with the authority to assess and collect fees for examinations.

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 28, 1993.

TRD-9329573
William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 505-7066

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Licensed Real Estate Inspectors

- 22 TAC §§535.205, 535.208, 535.212, 535.214, 535.216, 535.218, 535.221, 535.224, 535.226, 535.226

The Texas Real Estate Commission proposes amendments to §§535.205, 535.208, 535.212, 535.214, 535.216, 535.218, 535.221, 535.224, and 535.226, concerning licensed real estate inspectors. The amendments generally conform the sections with The Real Estate License Act, Texas Civil Statutes, Article 6573a, as amended by House Bill 991 (73rd Legislature).

The amendments to §§535.205, 535.208, 535.212, 535.214, 535.216, 535.218, 535.221, and 535.226 would substitute the statutory terms "professional inspector," "real estate inspector" and "licensed apprentice inspector" for the respective previous terms "real estate inspector," "inspector-in-training" and "registered apprentice inspector" and clarify the type of license involved in the sections.

The proposed amendment to §535.224 conforms the section with a provision in House Bill 991 which permits the commission to authorize the Texas Real Estate Inspector Committee, an advisory committee of 12 inspectors appointed by the commission, to conduct administrative hearings or recommend the entry of final orders, or both, in contested cases involving inspectors. The current section requires the Texas Real Estate Inspector Committee to conduct hearings

and recommend the entry of final orders. The amendment to §535.224 also substitutes new statutory terms for the inspector licenses issued by the commission.

Mark A. Moseley, general counsel, 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. Moseley 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 conforming the sections with current law. 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 Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are 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.

§535.205. Inspectors Licensed Under Prior Law.

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

(f) Inspections required to obtain a license or to sponsor apprentices or real estate inspectors [inspectors-in-training] shall be measured in accordance with the provisions of §535.212 of this title (relating to Education and Experience Requirements for a License).

§535.208. Application for a License [or Registration].

(a) A person desiring to be licensed [or registered] shall file an application using forms prescribed by the commission. The commission may not accept an application for filing if the application is materially incomplete or the application is not accompanied by the appropriate fee. The commission may not issue a license [or registration] unless the applicant:

(1)-(4) (No change.)

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

(d) An application for a license [or registration] may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing before the committee on the denial

shall be as provided in the Act, §10, and §535.224 of this title (relating to Proceedings before the Committee).

(e) Procuring or attempting to procure a license [or registration] by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the [registration or] license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application to license [register] an apprentice or to license real estate inspector [an inspector-in-training].

§535.212. Education and Experience Requirements for a License.

(a) (No change.)

(b) The commission may approve courses to be submitted by applicants for a real estate inspector [inspector-in-training] or a professional [real estate] inspector license upon a determination of the commission that:

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

(c)-(h) (No change.)

(i) For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors [inspectors-in-training], the commission shall consider an improvement to real property to be any unit which is capable of being separately rented, leased or sold. Applicants who claim experience for oral inspection reports must be able to verify that an inspection was performed by file memoranda or other documentation. Subject to the following restrictions, a inspection of an improvement to real property which includes the structural and equipment/systems of the unit shall constitute a single inspection.

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

(4) Real estate inspectors [Inspectors-in-training] and professional inspectors may not receive experience credit for an inspection performed by an apprentice under their supervision.

§535.214. Examinations. There shall be an examination for a real estate inspector [an inspector-in-training] license and for a professional [an] inspector license. Questions shall be used which will measure competency in the subject areas required for licensure by Texas Civil Statutes, Article 6573a, §23, (the Act) and which will demonstrate an awareness of its provisions relating to inspectors. Each applicant must achieve a score of at least 75% on the examination. The examination for a professional [an] inspector license shall measure a

higher level of competency than that required of a real estate inspector [an inspector-in-training].

§535.216. Renewal of License or Registration.

(a) A person [registered or] licensed by the commission under Texas Civil Statutes, Article 6573a (the Act), §23, may renew the [registration or] license by timely filing the prescribed application for renewal, paying the appropriate fee to the commission and satisfying applicable continuing education requirements as required by the Act, §23(k), and by §535.218 of this title (relating to Continuing Education).

(b) The commission shall mail the prescribed renewal application form to the last known business address of the [registrant or] licensee at least 30 days prior to the expiration of the [registration or] license. An apprentice inspector or a real estate inspector [an inspector-in-training] must be sponsored by a licensed professional [real estate] inspector in order to renew a [registration or] license. It is the responsibility of the [registrant or] licensee to apply for renewal, and failure to receive a renewal application form does not relieve the [registrant or] licensee of the responsibility of applying for renewal.

(c) Renewal applications filed after expiration of the [registration or] license are subject to the increased fees provided by the Act, §23(f).

(d) (No change.)

(e) A [registrant or] licensee who timely files a renewal application may continue to practice prior to receiving a new [registration or] license certificate from the commission. A [registrant or] licensee whose [registration or] license expires before the renewal application is filed may not practice until the new certificate is received.

§535.218. Continuing Education.

(a) Except as provided by this section, core real estate inspection courses submitted by professional inspectors or real estate inspectors [inspectors-in-training] to satisfy the requirements of Texas Civil Statutes, Article 6573a (the Act), §23(k), for continuing education must comply with §535.212 of this title (relating to Education and Experience Requirements for a License).

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

(d) A professional [An] inspector or real estate inspector [inspector-in-training] who fails to renew a license which was subject to continuing education requirements and who files an application for renewal within one year after the previous license has expired must provide evidence

satisfactory to the commission that the applicant has completed any continuing education that would have been required for renewal of the previous license. Continuing education courses submitted as part of the application must have been completed within a 24-month period prior to the filing of the application.

§535.221. Advertisements.

(a) (No change.)

(b) Advertisements by a person licensed as a professional [real estate] inspector or real estate inspector [inspector-in-training] or licensed [registered] as an apprentice inspector shall contain the name or assumed business name of the licensee [or registrant]. If the person is licensed as a professional [an] inspector or real estate inspector [inspector-in-training], the advertisements shall also contain the license number of the person. If the person is licensed as a real estate inspector [an inspector-in-training] or [registered] as an apprentice inspector, the advertisements shall also contain the following:

(1) the name of the person's sponsoring professional inspector; and

(2) a statement indicating that the person is sponsored by that professional inspector.

(c) A licensed professional inspector, real estate inspector [inspector-in-training], or [registered] apprentice inspector shall immediately notify the commission in writing of the licensee's [licensee or registrant's] use of an assumed name in the inspection business.

(d) The commission may reprimand or suspend or revoke the license [or registration] of a person who is found to have engaged in false or misleading advertising or to have failed to comply with provisions of this section.

§535.224. Proceedings before the Committee.

(a) The committee may be authorized by the commission to [shall] conduct administrative hearings or [and] recommend the entry of final orders by the commission, or both, in contested cases regarding:

(1) professional inspectors, real estate inspectors, [inspectors-in-training] or apprentice inspectors who are alleged to have violated a provision of Texas Civil Statutes, Article 6573a, (the Act), §23, or a rule of the commission;

(2) persons whose applications for licensing as professional inspectors, real estate inspectors, [or inspectors-in-training] or [for registration] as apprentice

inspectors have been initially denied by the commission on a ground relating to the applicant's honesty, trustworthiness and integrity; and

(3) professional inspectors, real estate inspectors, [inspectors-in-training] or apprentice inspectors who have been convicted of a criminal offense listed in §541.1 of this title (relating to Criminal Offense Guidelines).

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

§535.226. Sponsorship of Apprentice Inspectors [Apprentices] and Real Estate Inspectors [Inspectors-in-training].

(a) An apprentice inspector may be sponsored by only one licensed professional inspector. A real estate inspector [An inspector-in-training] may be sponsored by only one licensed professional inspector.

(b) A change in sponsorship shall be reported to the commission immediately. An apprentice inspector or real estate inspector [inspector-in-training] may act for the new sponsoring professional inspector once the written notice has been placed in the mail to the commission along with the fee for reporting any change of address.

(c) Written inspection reports must be signed by the apprentice inspector who performed the inspection and by the real estate inspector [inspector-in-training] or professional inspector who directly supervised the inspection.

(d) A licensed professional inspector is responsible for the conduct of a licensed [registered] apprentice inspector sponsored by the professional inspector. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by the following means:

(1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector [an inspector-in-training] to accompany the apprentice; and

(2) (No change.)

(e) A licensed professional inspector is responsible for the conduct of a licensed real estate inspector [inspector-in-training] sponsored by the professional inspector. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector [inspector-in-training] and any licensed [registered] apprentice inspectors directly supervised by the real estate inspector [inspector-in-training]. At a minimum a professional [an] inspector shall provide indirect supervision of the real estate inspector [inspector-in-training] by doing the following:

(1) communicating with the real estate inspector [inspector-in-training] on a regular basis about the inspections being performed by the real estate inspector [inspector-in-training]; and

(2) reviewing on a regular basis written inspection reports prepared by the real estate inspector [inspector-in-training] for compliance with the provisions of §535.222 of this title (relating to Standards of Practice).

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 30, 1993.

TRD-9329682

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 465-3900

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §§97.1-97.22

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

The Texas Department of Health (department) proposes the repeal of §§97.1-97.22 and proposes new §§97.1-97.13, the repeal of §§97.131-97.136 and proposes new §§97.131-97.145, concerning control of communicable diseases and sexually transmitted disease. The repeal of §§97.1-97.22 and new §§97.1-97.13 remove coccidioidomycosis, histoplasmosis, influenza and flu-like illness, leptospirosis, psittacosis, Q fever, Reye syndrome, toxic shock syndrome, and tularemia from the list of reportable diseases; add chancroid, relapsing fever, invasive Group A streptococcal disease, and tuberculosis infection in persons less than 15 years of age to the list of reportable diseases and clarify the description of other existing reportable diseases. The repeal of §§97.131-97.136 and proposed new §§97.131-97.145 will move all sections specifically dealing with HIV and/or AIDS from §§97.1-97.22 to §§97.131-97.145. In addition, major revisions have been made to the format used in all sections to more clearly identify the rules and procedures.

James Drake, chief of staff services, Office of the Associate Commissioner for Disease Prevention, Texas Department of Health, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state government or local government as a result of enforcing or administering the section as proposed.

Mr. Drake also has determined that for each year of the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing these sections will be improved reporting of reportable conditions leading to better control of those important public health conditions. There is no anticipated additional cost to small businesses nor to individuals. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Charles Bell, M.D., Bureau of HIV & STD Control, 1100 West 49th St., Austin, Texas 78756. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register*.

The repealed sections are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§97.1. Definitions.

§97.2. Who Shall Report.

§97.3. Reportable Diseases and Health Conditions.

§97.4. Where to Report a Communicable Disease.

§97.5. Reporting and Other Duties of Local Health Authorities and Regional Directors.

§97.6. Diseases Requiring Exclusion from Child-Care Facilities and Schools.

§97.7. General Control Measures for Reportable Diseases.

§97.8. Quarantine of Specific Premises.

§97.9. Confidential Nature of Case Reporting and Records.

§97.10. Notification of Emergency Medical Service Employee, Peace Officer, or Firefighter of Possible Exposure to Diseases.

§97.11. *Death of a Person with Certain Communicable Diseases.*

§97.12. *Exposure of Health-Care Personnel to HIV or AIDS.*

§97.13. *Guidelines for Testing Certain Indicated Persons for Certain Diseases.*

§97.14. *Fees for Providing Written Notice of a Positive HIV-related Test Result to an Applicant for Insurance.*

§97.15. *Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection.*

§97.16. *Reserved.*

§97.17. *Possible Exposure of State Employees to HIV.*

§97.18. *Fee to Cover the Cost of Providing the HIV Counseling and Testing Course.*

§97.19. *Model Health Education Program/Resource Guide for HIV/AIDS Education of School-Age Children.*

§97.20. *Model HIV/AIDS Workplace Guidelines.*

§97.21. *Model Policies for the Handling, Care and Treatment of HIV/AIDS-Infected Persons in the Custody of or Under the Supervision of Correction Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers and District Probation Departments.*

§97.22. *Exposure of Certain Persons to Reportable Diseases.*

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 October 1, 1993.

TRD-9329741 Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Proposed date of adoption: December 17, 1993

For further information, please call: (512) 458-7463

◆ ◆ ◆
• 25 TAC §§97.1-97.13

The new sections are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81,

which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§97.1. *Definitions.* The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Act—Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

AIDS—Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service. The publication designating the most current definition may be requested from: Texas Department of Health, HIV Surveillance Program, 1100 West 49th Street, Austin, Texas 78756, 512/458-7504 or 800/252-8239.

Carrier—An infected person or animal that harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source or reservoir for the infection of man.

Case—As distinct from a carrier, the term "case" is used to mean a person in whose tissues the etiological agent of a communicable disease is lodged and which usually produces signs or symptoms of disease. Evidence of the presence of a communicable disease may also be revealed by routine laboratory findings.

Commissioner—Commissioner of Health.

Communicable disease—An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

Contact—A person or animal that has been in such association with an infected person or a contaminated environment so as to have had opportunity to acquire the infection.

Department—Texas Department of Health.

Disinfection—Destruction of infectious agents outside the body by chemical or physical means directly applied.

Epidemic or outbreak—The occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.

Health authority—A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health

authority, for purposes of these sections, may be a:

(A) local health authority:

(i) director of a local health department; or

(ii) physician as appointed by the Commissioner of Health if there is no director of a local health department; or

(B) regional director of the Texas Department of Health if no physician has been appointed by the Commissioner of Health as a local health authority.

HIV—Human immunodeficiency virus.

HIV infection—Infection with HIV confirmed by one of the following laboratory procedures:

(1) a serum specimen that is repeatedly reactive for HIV antibody by a licensed screening test (e.g. enzyme-linked immunosorbent assay (ELISA)) and the same or an additional serum specimen that is positive by a subsequent test (e.g. Western blot, immunofluorescence assay); or

(2) a positive test for serum HIV antigen; or

(3) a positive lymphocyte culture confirmed by an HIV specific antigen test (not just reverse transcriptase detection); or

(4) by in situ hybridization technique using a Deoxyribonucleic acid (DNA) probe (e.g. polymerase chain replication (PCR)).

Hospital laboratory—Any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.

Outbreak—See definition of Epidemic in this section.

Physician—A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.

Regional director—The physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121.

Report—Information that is required to be provided to the department.

Report of a disease—The notification to the appropriate authority of the occurrence of a specific communicable disease in man or animals, including all information required by the procedures established by the department.

Reportable disease—Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What to Report). Any outbreak, exotic disease, or un-

usual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title (relating to What to Report), shall be considered a "reportable disease."

School administrator—The city or county superintendent of schools, or the principal of any school not under the jurisdiction of a city or county board of education.

§97.2. Who Shall Report.

(a) A physician, dentist, veterinarian, or chiropractor shall report as required by these sections, each patient or animal he or she shall examine and who has or is suspected of having any reportable disease or health condition, and shall report any outbreak, exotic disease, or unusual group expression of illness of any kind whether or not the disease is known to be communicable or reportable. An employee from the clinic or office staff may be designated to serve as the reporting officer. A physician, dentist, veterinarian, or chiropractor who can assure that a designated or appointed person has already reported one of these diseases or health conditions does not have to submit a duplicate report.

(b) The chief administrative officer of a hospital shall appoint one reporting officer who shall be responsible for reporting each patient who is medically attended at the facility and who has or is suspected of having any reportable disease or health condition. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(c) Except as provided in subsection (b) of this section, any person who is in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease or health condition shall report as required by this section.

(d) School authorities, including a superintendent, principal, teacher, school health official, or counselor of a public or private school and the administrator or health official of a public or private institution of higher learning should report as required by these sections those students attending school who are suspected of having a reportable disease. School authorities are exempt from reporting sexually transmitted diseases in accordance with §97.132(b)(5) (relating to Who Shall Report Sexually Transmitted Diseases.)

(e) Any person having knowledge that a person is suspected of having a reportable disease or health condition should notify the local health authority or the department and provide all information known

to them concerning the illness and physical condition of such person or persons.

(f) Failure to report a reportable disease is a Class B misdemeanor under the Texas Health and Safety Code, §81.049.

§97.3. What to Report.

(a) Identification of reportable conditions.

(1) The Texas Department of Health's (department) publication titled "Identification and Confirmation of Reportable Diseases" dated August, 1991, shall be used to determine when a reportable disease shall be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. The department adopts this publication by reference in this section. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies are indexed and filed in the Bureau of Disease Control and Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(2) Repetitive test results from the same patient do not need to be reported except for mycobacterial infections.

(b) Reportable conditions.

(1) Confirmed and suspected cases of the following diseases are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism—adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox; Chlamydia trachomatis infection; cholera; dengue; diphtheria; encephalitis (specify etiology); gonorrhea; Hansen's disease (leprosy); Haemophilus influenzae infection, invasive; hepatitis, acute viral (specify type); human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (Rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; rabies in man; relapsing fever; Rocky Mountain spotted fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; streptococcal disease, invasive Group A; syphilis; tetanus; trichinosis; tuberculosis; tuberculosis infection in persons less than 15 years of age; typhus; vibrio infection; viral hemorrhagic fevers; and yellow fever.

(2) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(c) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(1) for chickenpox—numeric totals by age group;

(2) for AIDS and HIV infection—shall be reported in accordance with §§97.132, 97.133, and 97.134 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection);

(3) for chancroid, Chlamydia trachomatis infection, gonorrhea, and syphilis—shall be reported in accordance with §§97.132, 97.133, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection);

(4) for tuberculosis—name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, and antibiotic susceptibility results; and

(5) for all other reportable diseases—name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, and date of onset.

§97.4. When to Report.

(a) The following reportable diseases are public health emergencies and suspect cases shall be reported immediately to the local health authority or the regional director of the Texas Department of Health (department): botulism, foodborne; cholera; diphtheria; Haemophilus influenzae infection, invasive; measles (Rubeola); meningococcal infection, invasive; pertussis; poliomyelitis, acute paralytic; plague; rabies in man; viral hemorrhagic fevers; and yellow fever.

(b) The following reportable diseases shall be reported within one working day of identification as a suspected case: rubella (including congenital) and tuberculosis disease.

(c) Chancroid, Chlamydia trachomatis infection, gonorrhea, and syphilis shall be reported in accordance with §§97.132, 97.133, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV infection).

(d) AIDS and HIV infection shall be reported in accordance with §§97.132, 97.133, and 97.134 of this title.

(e) Tuberculosis antibiotic susceptibility results should be reported by laboratories no later than one week after they first become available.

(f) For all other reportable diseases not listed in subsections (a) - (c) of this section, reports of disease shall be made no later than one week after a case or suspected case is identified.

§97.5. Where to Report.

(a) A physician, dentist, veterinarian, chiropractor, reporting officer of a hospital and a person in charge of a hospital laboratory (if the laboratory reports independently), or school authority shall report to the local health authority where the office, clinic, hospital, or school is located. If there is no local health authority appointed for the jurisdiction where the office, clinic, hospital, or school is located, the report shall be made to the Texas Department of Health (department) regional director. Public health emergencies shall be reported to the department's central office if the local health authority or the department's regional director is not immediately accessible.

(b) The administrative officer of a clinical laboratory, blood bank, mobile unit, or other facility shall report as follows.

(1) If the laboratory examination was requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the physician's office is located, to the department's regional director for the jurisdiction where the physician's office is located if no local health authority exists, or to the department's central office when the regional director or local health authority are unknown to the laboratory.

(2) If the laboratory examination was not requested by a physician, notice shall be sent to the local health authority for the jurisdiction where the laboratory is located, to the department's regional director for the jurisdiction where the laboratory is located if no local health authority has been appointed, or to the department's central office when the regional director or local health authority are unknown to the laboratory.

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors.

(a) The purpose of this section is to provide procedures for local health authorities and regional directors to report a disease to the Texas Department of Health's (department) central office.

(b) Those reportable conditions identified as public health emergencies in §97.4(a) of this title (relating to When to Report) shall be reported immediately to the department by telephone.

(c) Chancroid, Chlamydia trachomatis infection, gonorrhea, and syphilis shall be reported in accordance with §§97.132, 97.133, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases including AIDS and HIV Infection).

(d) AIDS and HIV infection shall be reported in accordance with §§97.132, 97.133, and 97.134 of this title.

(e) The local health authority or the department's regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department:

(1) for chickenpox - numerical totals by age group; and

(2) for all other reportable diseases - by name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, and date of onset.

(f) Transmittal may be by telephone, mail, courier, or electronic transmission.

(1) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

(2) If by electronic transmission, including facsimile transmission by telephone, the local health authority or the department's regional director must obtain prior approval of the manner and form of the transmission from the Commissioner of Health (commissioner) or his/her designee. Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal.

(g) The health authority shall notify health authorities in other jurisdictions of a case or outbreak of a communicable disease that has been reported if the case resides in another jurisdiction or there is cause to believe transmission of a disease may have occurred in another jurisdiction. The department shall assist the health authority in providing such notifications upon request. The health authority of the area where the case or outbreak is diagnosed shall report the case or outbreak to the department on the same basis as other reports.

(h) The health authority upon identification of a case or upon receipt of notification or report of disease shall take such action and measures as may be necessary to conform with the appropriate control measure standards. The health authority may upon identification of a case or upon report of a communicable disease in a child attending a public or private child-care facility or a school notify the owner or operator of the child-care facility or the school administrator. The commissioner is authorized to amend, revise, or revoke any control measure or action taken by the health authority if necessary or desirable in the administration of a regional or statewide public health program or policy.

(i) The health authority is empowered to close any public or private child-care facility, school or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly shall not reopen until permitted by the health authority who caused its closure.

§97.7. Diseases Requiring Exclusion from Child-care Facilities and Schools.

(a) The Texas Department of Health (department) publication titled "Communicable Disease Chart for Schools and Child Care Centers" may be used to determine the incubation period, early signs of illness, and prevention/treatment measures of communicable conditions. Copies are available on request.

(b) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable condition. Exclusion shall continue until the readmission criteria for the conditions are met. The conditions and readmission criteria are listed below:

(1) amebiasis-exclude until treatment is initiated;

(2) campylobacteriosis-exclude until after diarrhea and fever subside;

(3) chickenpox-exclude until after seven days from onset of rash, except immunocompromised individuals who should not return until all blisters have crusted over (may be longer than seven days) ;

(4) common cold-exclude until fever subsides;

(5) conjunctivitis, bacterial and/or viral-exclude until written permission and/or permit is issued by a physician or local health authority;

(6) fever-exclude until fever subsides;

(7) fifth disease (erythema infectiosum)-exclude until fever subsides;

(8) gastroenteritis, viral-exclude until diarrhea subsides;

(9) giardiasis-exclude until diarrhea subsides;

(10) head lice (pediculosis)-exclude until one medicated shampoo or lotion treatment has been given;

(11) hepatitis, viral, type A-exclude until one week after onset of illness;

(12) impetigo-exclude until treatment has begun;

(13) infectious mononucleosis-exclude until physician decides or fever

subsidies;

(14) influenza—exclude until fever subsides;

(15) measles (rubeola)—exclude until four days after rash onset or in the case of an outbreak, unimmunized children should also be excluded for at least two weeks after last rash onset occurs;

(16) meningitis, bacterial—exclude until written permission and/or permit is issued by a physician or local health authority;

(17) meningitis, viral—exclude until fever subsides;

(18) mumps—exclude until nine days after the onset of swelling;

(19) pertussis (whooping cough)—exclude until completion of five days of antibiotic therapy;

(20) ringworm of the scalp—exclude until treatment has begun;

(21) rubella (German measles)—exclude until seven days after rash onset or in the case of an outbreak, unimmunized children should be excluded for at least three weeks after last rash onset occurs;

(22) salmonellosis—exclude until diarrhea and fever subside;

(23) scabies—exclude until treatment has begun;

(24) shigellosis—exclude until diarrhea and fever subside;

(25) streptococcal sore throat and scarlet fever—exclude until 24 hours from time antibiotic treatment was begun and fever subsided; and

(26) tuberculosis, pulmonary—exclude until antibiotic treatment has begun and a physician's certificate or health permit obtained.

(b) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the Commissioner of Health (commissioner) as cause for exclusion until one of the criteria listed in subsection (c) of this section is fulfilled.

(c) Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by submitting:

(1) a certificate of the attending physician attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a child-care or school setting;

(2) a permit for readmission issued by a local health authority; or

(3) readmission criteria as established by the commissioner.

§97.8. General Control Measures for Reportable Diseases. Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the Commissioner of Health (commissioner), a health authority, or a duly authorized representative of the commissioner or a health authority may proceed as follows.

(1) Investigation shall be made, as the circumstances may require, for verifying the diagnosis, ascertaining the source of the causative agent, disclosing unreported cases, and finding contacts. On request, a person shall provide the Texas Department of Health (department) or health authority with records, data, and other information according to the written instruction of the department or health authority. The health authority and the department shall keep this information confidential.

(2) Laboratory specimens of the body tissues, fluids, or discharges and of materials directly or indirectly associated with the case, as may be necessary or desirable in confirmation of the diagnosis or for ascertaining the source of the infection, shall be collected and submitted to a laboratory for examination.

(3) Control techniques, including disinfection, environmental sanitation, immunization, chemoprophylaxis, isolation, preventive therapy, quarantine, education, prevention, and other accepted measures shall be instituted as necessary to reduce morbidity and mortality. In establishing quarantine or isolation, the health authority shall designate and define the limits of the areas in which the persons are quarantined or isolated. No person may be quarantined or isolated by a health authority without his or her consent unless the person is subject to court orders under the Communicable Disease Prevention and Control Act Article 8.

(4) Information concerning the disease and its prevention shall be given to the patient or a responsible member of the patient's household to prevent further spread of the disease.

(5) Control measures implemented by the health authority shall be consistent with and at least as stringent as those control measure standards imposed by the department. Individual control measures implemented by the health authority are subject to review and modification or change by the commissioner.

§97.9. Quarantine of Specific Premises. A health authority may declare a house,

building, apartment, room, or place within the health authority's jurisdiction to be a place of quarantine whenever a case of communicable disease occurs therein, and, in the health authority's opinion, it is necessary to do so in order to protect the public health. No person shall leave or enter the place during the period of quarantine except with specific permission of the health authority.

§97.10. Confidential Nature of Case Reporting and Records.

(a) All individual morbidity case reports received by the health authority or the Texas Department of Health (department) are confidential records and not public records.

(b) To implement disease control measures authorized in these sections, it may be necessary for the health authority or the department to investigate public or private health records including patient medical records pertinent to the reportable disease. On request, a person shall provide the department with records, data, and other information according to the written instruction of the department. The health authority and the department shall keep this information confidential.

(c) The department may use information obtained from reports or health records for statistical and epidemiological studies which may be public information as long as an individual is not identifiable.

§97.11. Notification of Emergency Medical Service Employee, Firefighter, or Peace Officer of Possible Exposure to a Disease.

(a) The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a health authority in certain instances when an emergency medical service employee, a peace officer, or a firefighter may have been exposed to a communicable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox; diphtheria; Haemophilus influenzae infections, invasive; meningitis (specify type); meningococcal infections, invasive; mumps; pertussis; poliomyelitis; psittacosis; Q fever (pneumonia); rabies; rubella; and tuberculosis, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(2) acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; dengue; hepatitis, viral; human

immunodeficiency virus (HIV) infection; malaria; plague; syphilis; tularemia; typhus; viral hemorrhagic fevers and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids;

(3) amebiasis; campylobacteriosis; cholera; hepatitis A; salmonellosis, including typhoid fever; shigellosis; and vibrio infections, if fecal material is ingested; and

(4) measles (Rubeola); pneumonic plague; tuberculosis; and viral hemorrhagic fevers if the worker and patient are in the same room, vehicle, ambulance, or other enclosed space.

(b) A hospital shall report to the health authority the name of the transport person exposed, the date of exposure, the type of exposure, and the disease or condition to which exposure may have occurred.

§97.12. Death of a Person with Certain Communicable Diseases.

(a) If a physician has knowledge that a person had, at the time of death, a communicable disease listed in subsection (c) of this section, then the physician shall affix or cause to be affixed a tag on the body, preferably on a great toe.

(b) The tag shall be on card stock paper and shall be no smaller than five centimeters by ten centimeters. The tag shall include the words "COMMUNICABLE DISEASE-BLOOD/BODY SUBSTANCE PRECAUTIONS REQUIRED" in letters no smaller than six millimeters in height. The name of the deceased person shall be written on the tag. The tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(c) Diseases that shall require tagging are acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; cholera; Creutzfeldt-Jakob disease; hepatitis, viral; human immunodeficiency virus (HIV) infection; plague; Q fever; rabies; relapsing fever; Rocky Mountain spotted fever; syphilis; tuberculosis; tularemia; and viral hemorrhagic fevers.

(d) All persons should routinely practice the following procedure when performing post-mortem care on a deceased person who is known or suspected of having a communicable disease listed in subsection (c) of this section.

(1) A person should wear a gown, gloves, a mask, and eye-coverings when performing procedures involving ex-

tensive contact with blood or body fluids. Skin should be washed immediately if the skin is or may be contaminated with blood or body fluids.

(2) Needles should not be recapped, purposefully bent, broken, or removed from disposable syringes. Needles and other sharp items should be disposed of in puncture-resistant containers. Contaminated articles that may be disposed of by bagging should be bagged in plastic bags not less than 1.5 mil thick each. Other articles may be disposed of by incineration or disinfected by chemical disinfection or steam sterilization.

(3) Spills of blood and other body fluids should be cleaned promptly with a solution of household chlorine bleach diluted 1:10 with water or an Environmental Protection Agency-approved disinfectant that is tuberculocidal at recommended dilutions.

§97.13. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including Human Immunodeficiency Virus (HIV) Infection.

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.050, provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, a correctional officer, or a law enforcement officer who receives a bona fide exposure to a reportable disease, including HIV infection, in the course of employment or volunteer service may request the Texas Department of Health (department) or the department's designee to order testing of the person who may have exposed the worker. This section establishes guidelines to designate the criteria that constitute exposure to a reportable disease, including HIV infection. The guidelines also prescribe minimum training requirements of the department's designee who will judge if the request meets criteria establishing risk of infection with a reportable disease, including HIV infection.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings:

(1) Emergency responder—An emergency medical services employee, paramedic, fire fighter, correctional officer or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.

(2) Requestor—Emergency responder who presents a sworn affidavit to a local health authority to request testing of a person who may have exposed him/her to an infectious disease in the course of his/her duties.

(3) Designated health official—For the purposes of implementing the Health and Safety Code, §81.050(d)-(e), the following physicians have been delegated by the department to be the designated health officials who determine if a risk of exposure to a reportable disease has occurred:

(A) the health authority for the jurisdiction in which the emergency responder is employed;

(B) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of communicable diseases in the municipality or county served by the health department;

(C) if the health authority does not choose to make determinations of the risks of exposure and there is not a separate physician employed by the county or municipal health department with responsibility for the control of communicable diseases, or for counties which do not have an appointed health authority, the regional director of the Texas Department of Health (department) region of which the county or municipality is a part; and

(D) for the Texas Department of Criminal Justice (TDCJ), the TDCJ Deputy Director of Health Services (Institutional Division) who must serve as the designated health official in determining risk of exposure to correctional officers employed by the TDCJ.

(4) Source—The person who may have exposed an emergency responder to a reportable, communicable disease during the emergency responder's course of duties.

(c) Diseases and designated conditions that constitute exposure to reportable diseases. For the purposes of the Health and Safety Code, §81.050, the diseases and designated conditions constitute exposure to a reportable disease, including HIV infection, are as follows:

(1) chickenpox; diphtheria; Haemophilus influenzae infections, invasive; meningitis (specify type); meningococcal infections, invasive; mumps; pertussis; poliomyelitis; psittacosis; Q fever (pneumonia); rabies; rubella; and tuberculosis if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(2) acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; dengue; hepatitis, viral; human immunodeficiency virus (HIV) infection;

malaria; plague; syphilis; tularemia; typhus; viral hemorrhagic fevers; and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids;

(3) amebiasis; campylobacteriosis; cholera; hepatitis A; salmonellosis, including typhoid fever; shigellosis; and vibrio infections, if fecal material is ingested; and

(4) measles (Rubeola); pneumonic plague; tuberculosis; and viral hemorrhagic fevers if the worker and the patient are in the same room, vehicle, ambulance or other enclosed space.

(d) Department designee. For the purposes of the Health and Safety Code, §81.050, the following guidelines prescribe requirements of the department's designee who will judge if the request for testing meets criteria establishing risk of infection with a reportable disease, including HIV infection.

(1) The health authority for the jurisdiction in which the emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer, who is employed or volunteers shall review the request, presented as a sworn affidavit, and determine whether the request meets the criteria set out in subsection (c) of this section.

(2) If an exposure is judged to have occurred, the health authority will then determine whether that exposure constitutes a reasonable risk of infection to the requester. However, if the correctional officer is employed by the Texas Department of Criminal Justice (TDCJ) (Institutional Division), the Deputy Director for Health Services of that agency shall judge if the request for testing meets the criteria for risk of infection. In determining risk of infection, the health authority or the TDCJ Deputy Director for Health Services shall follow guidance given in the current edition of "Control of Communicable Diseases in Man," published as an official report by the American Public Health Association.

(e) Procedures for mandatory testing. Steps necessary to mandate testing for a reportable communicable disease.

(1) Submitting a request for testing of a source. If an employed or volunteer emergency responder believes he or she may have been exposed to a reportable disease while discharging his or her duties, then he or she, within 72 hours, must have postmarked or submitted in person a sworn affidavit to his or her designated health official requesting that the source be tested

for the reportable communicable disease(s) which is (are) of concern. The sworn, written affidavit of the requestor must contain:

(A) name;

(B) home address;

(C) telephone number at work;

(D) telephone number at home;

(E) the name and address of the emergency agency where he or she works or volunteers;

(F) an emergency telephone number;

(G) date and time of exposure;

(H) the circumstances of the exposure;

(I) the source's symptoms, if known (e.g. rash, fever, chills, jaundice, productive cough, diarrhea, nausea/vomiting, neurologic signs, coryza, hemorrhage, other);

(J) transport designation of the source; and

(K) if known, the source's name, address, preliminary diagnosis, and probable present location.

(2) Responsibilities of the requestor. If the requestor believes he or she may have been exposed to a reportable disease and that, if infection occurs, he/she may file for worker's compensation, then the requestor must obtain an appropriate medical test which demonstrates susceptibility to the infection of concern. This test must be obtained within 10 days of the alleged exposure. The requestor should also be aware that he or she may be liable for any court costs if the source person refuses to be tested for infection with a reportable disease and the requestor takes the matter to court and loses.

(3) Determination of exposure. The designated health official must decide within three working days of receipt of the sworn affidavit if an exposure likely to lead to an infection has occurred. The designated health official must also consult the most recent edition of Control of Communicable Diseases in Man, published by the Ameri-

can Public Health Association, and should also consult any other reference which may provide additional relevant information.

(4) Relating the determination of exposure.

(A) Ruling of a non-exposure. If the designated health official determines that an exposure likely to lead to an infection with a reportable disease did not occur, then he or she must so inform the requestor by letter. The letter must contain a brief explanation of the basis of the decision. The designated health official may also notify the requestor by telephone, but this does not preclude the need for a written response.

(B) Ruling of an exposure.

(i) If the designated health official determines that the conditions of exposure were such that there was a reasonable chance that infection may have occurred, then he or she must notify the requestor by registered/certified mail and request that the requestor consult the designated health official. If the situation is such that control or treatment measures are immediately advisable, then the designated health official must also make a reasonable effort to notify the requestor of what actions need to be taken.

(ii) During the consultation with the designated health official, the requestor must receive the following information both verbally and in writing:

(I) the disease(s) which may have been transmitted during the exposure;

(II) the tests that are available to detect infection;

(III) where and when to obtain testing;

(IV) the prophylactic measures which are appropriate; and

(V) signs and symptoms of infection.

(iii) If the requestor may have been exposed to HIV virus, then approved pretest counseling must be provided. The designated health official must state that he or she will proceed to locate the source and request the source to undergo testing. The designated health official must also state that if the source refuses to be tested, then the designated health official will consult with the requestor to determine if he or she wishes to pursue the matter into

court. The designated health official must warn the requestor that if the matter is taken to court and the court rules that testing of the source is not required, then the requestor may be liable for court costs.

(5) Disagreement with designated health official's ruling. If the requestor does not agree with the determination of the designated health official, and wants to pursue the matter further then the requestor must submit a copy of his or her original sworn affidavit to the Commissioner of Health (commissioner) for an independent assessment. The petition must be within seven days of the written notification by the designated health official. The decision of the commissioner is final. If the commissioner decides that the conditions of the exposure were such that there existed a reasonable chance of exposure to a reportable disease, then the designated health official in whose jurisdiction the exposure occurred must continue action to obtain testing of the source.

(6) Notification of the source.

(A) Once the designated health official determines that an exposure with risk of transmission of a reportable disease has occurred, the designated health official must within three working days attempt to locate and notify the source or the source's legal guardian. Notification must be by hand-delivered letter which will ask the source or the source's legal guardian to contact the designated health official but will not relate the reasons for the request. The designated health official must personally converse with the source or the source's legal guardian regarding the potential transmission of a reportable disease to an emergency responder.

(B) If the source is hospitalized, incarcerated, or otherwise unable to personally consult with the designated health official, then a health professional trained in relating health information (e.g. registered or licensed vocational nurse, disease intervention specialist, epidemiologist) must relate verbally and in writing the request for information regarding the source's current status related to certain reportable diseases.

(C) At least three attempts must be made to deliver the notice to the source or source's legal guardian. If after three attempts, the notice has not been delivered then the designated health official will mail the notice by registered mail to the last known address of the source or source's legal guardian.

(7) Information provided to source.

(A) Once contacted, the designated health official must relate to the source or source's legal guardian (both verbally and in writing in a language the source can understand) that:

(i) an emergency responder has had contact with the source in a manner that transmission of disease may have occurred;

(ii) this person is now requesting information on the possible contagiousness of the source with a disease(s) reportable by law;

(iii) the source or source's legal guardian is asked to present laboratory or other medically valid evidence that he or she did or did not have the disease(s) at the time of exposure; and

(iv) that the source or source's legal guardian is required to present this information or evidence that an appropriate specimen has been submitted for testing within 14 days of receipt of a written request for testing.

(I) The request must describe the type of test required (e.g. blood for antigen or antibody, culture) and where such a test and appropriate counseling can be obtained.

(II) The request must also state that if the source or source's legal guardian chooses not to use public health facilities for testing, then he or she is liable for any costs incurred from testing.

(B) The test results or proof that the test specimen had been taken must be in the form of a signed and dated statement from a physician or laboratory stating the specimen has been collected and the approximate date that the laboratory or other results would be ready. The proof of specimen collection must be returned to the designated health official within 17 days after receipt of the written request for testing from the designated health official. If the source or source's legal guardian already has proof of laboratory results which demonstrate that the source was or could not have been infectious at the time of the exposure to the source, then the previous results substitute for new testing.

(C) A source or the source's legal guardian who states that the source has been tested in the past and was positive for HIV or chronic hepatitis B but is unable to produce valid written results (anonymous test sites, special screens, lost records) must be asked to be retested. If they refuse, then this information must be relayed to the requestor.

(8) Source objection to determination of exposure. If the source or the source's legal guardian objects to the designated health official's decision that he or she was involved in potentially exposing an emergency responder to a reportable disease, then he or she must present a copy of his or her original sworn affidavit to the commissioner for an independent assessment. The decision of the commissioner is final.

(9) Test results. The source or the source's legal guardian has the responsibility of presenting the test result(s) to the health authority within five days of receipt. The results must show that the tested specimen was collected from the source, the date of collection, the type of test which was conducted, and the results of the test. The results must have the original signature of the physician who ordered, performed, or was responsible for the testing.

(10) Notification of the requestor. When the test results from the source are obtained, the designated health official must arrange for an interview with the requestor. During the interview the designated health official must provide verbally and in writing the results of any testing on the source. If warranted by the test results, the designated health official must also provide recommendations for medical follow-up.

(11) Refusal to be tested. If the source refuses to be tested, a statement to that effect must be signed by the source or the source's legal guardian. If the source or the source's legal guardian refuses to sign a statement or does not comply with the written request to be tested within the allotted 14-day time interval after notification, then the designated health official will ask for a written statement from the requestor stating that the matter should or should not be referred to the district court. The written request must state that the requestor understands he or she may be liable for court costs if the court does not rule in favor of mandated testing of the source. The designated health official will then refer the request to the prosecuting attorney who represents the state in district court. The prosecuting attorney will request a hearing on the order.

(12) Court proceedings. The source has the right to an attorney at the hearing and the court will appoint an attorney for a person who cannot afford legal representation. The source or source's legal guardian cannot waive the right to an attorney unless he or she has consulted with an attorney. The court will then review the order and determine whether exposure occurred and represents a probable risk of infection. Evidence may be introduced by the attorney for the state or the attorney for the source. The court will then order testing

and appropriate counseling or refuse to issue the order. If the court does not find reasonable cause to have the person tested, then the court may charge court costs to the requestor.

(13) Results of court ordered tests. If a test is ordered, the designated health official must make arrangements for appropriate counseling, specimen collection, testing and maintenance of confidentiality of the source. The designated health official has the responsibility of notifying both the requestor and the source or source's legal guardian of the results of the testing and of any follow-up treatment and/or counseling. The designated health official must develop a protocol to code test specimens to ensure that identifying information concerning the source is destroyed as soon as testing is complete.

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 October 1, 1993.

TRD-9329742

Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Proposed date of adoption: December 17, 1993

For further information, please call: (512) 458-7463

Sexually Transmitted Disease

• 25 TAC §§97. 131-97.136

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

The repeals are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§97.131. Definitions.

§97.132. Reporting of Sexually Transmitted Disease.

§97.133. Serologic Testing During Pregnancy and at Delivery.

§97.134. Certification of Laboratories Performing Standard Serologic Tests.

§97.135. Reporting of Laboratory Tests for Sexually Transmitted Diseases.

§97.136. Prophylaxis Against Ophthalmia Neonatorum.

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 October 1, 1993.

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General Counsel
Texas Department of
Health

Proposed date of adoption: December 17, 1993

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Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection

• 25 TAC §§97.131-97.145

The new sections are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§97.131. Definitions. The following words and terms when used in these sections shall have the following meanings unless the context clearly indicates otherwise:

AIDS—Acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service. The publication designating the most current definition may be requested from: Texas Department of Health, HIV Surveillance Program, 1100 West 49th Street, Austin, Texas 78756, 512/458-7504 or 800/252- 8239.

HIV—Human immunodeficiency virus.

HIV infection—Infection with HIV confirmed by one of the following laboratory procedures:

(1) a serum specimen that is repeatedly reactive for HIV antibody by a licensed screening test (e.g. enzyme-linked immunosorbent assay (ELISA)) and the

same or an additional serum specimen that is positive by subsequent test (e.g. Western blot, immunofluorescence assay);

(2) a positive test for serum HIV antigen;

(3) a positive lymphocyte culture confirmed by HIV specific antigen test (not just reverse transcriptase detection); or

(4) an in situ hybridization technique using a Deoxyribonucleic acid (DNA) probe (e.g. polymerase chain replication (PCR)).

Sexually transmitted disease—an infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations of whatever kind between two persons, and that produces or might produce a disease in or otherwise impair the health of either person or might cause an infection or disease in a fetus in utero or a newborn. AIDS, chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis are sexually transmitted diseases.

§97.132. Who Shall Report Sexually Transmitted Diseases.

(a) The following shall provide information on cases of chancroid, Chlamydia trachomatis infection, gonorrhea, or syphilis:

(1) A physician or dentist shall report each patient that is diagnosed or treated for chancroid, Chlamydia trachomatis infection, gonorrhea, or syphilis. A physician or dentist may designate an employee of the clinic or physician's/dentist's office to serve as the reporting officer. A physician or dentist who can assure that a designated or appointed person is regularly reporting the occurrence of these diseases in their clinic or office does not have to submit a duplicate report.

(2) The chief administrative officer of a hospital, a medical facility or a penal institution shall report each patient who is medically attended at the facility and is diagnosed with chancroid, Chlamydia trachomatis infection, gonorrhea, or syphilis. The chief administrative officer may designate an employee of their institution to serve as the reporting officer. A chief administrative officer who can assure that a designated or appointed person is regularly reporting the occurrence of these diseases in their institution does not have to submit a duplicate report. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(3) Any person in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a blood specimen or any speci-

men derived from a human body that yields microscopic, cultural, serological, or any other evidence of chancroid, Chlamydia trachomatis infection, gonorrhoea, or syphilis shall report according to §97.133 of this title (relating to Reporting Information for Sexually Transmitted Diseases).

(4) School authorities as described in §97.2(e) of this title (relating to Who Shall Report) who are not medical directors meeting the criteria described in this section are exempt from reporting chancroid, Chlamydia trachomatis infection, gonorrhoea, or syphilis.

(b) The following shall report cases of HIV infection and AIDS cases.

(1) A physician or dentist shall report each patient that is diagnosed or treated for HIV infection or AIDS. A physician or dentist may designate an employee of the clinic or physician's/dentist's office to serve as the reporting officer. A physician or dentist who can assure that a designated or appointed person is regularly reporting the occurrence of these diseases in their clinic or office does not have to submit a duplicate report.

(2) The chief administrative officer of a hospital, a medical facility or a penal institution shall report each patient who is medically attended at the facility and is diagnosed with HIV infection or AIDS. The chief administrative officer may designate an employee of their institution to serve as the reporting officer. A chief administrative officer who can assure that a designated or appointed person is regularly reporting the occurrence of these diseases in their institution does not have to submit a duplicate report. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(3) Any person in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a blood specimen or any specimen derived from a human body that yields microscopic, cultural, serological, or any other evidence of HIV infection or AIDS shall report according to §97.133 of this title.

(4) The medical director or other physician responsible for the medical oversight of an HIV counseling and testing site or a community-based organization that provides medical and/or social services to HIV-infected individuals shall report each patient that is diagnosed with HIV infection or acquired immune deficiency syndrome. The medical director or other physician may designate an employee of the counseling and testing site or community-based organization to serve as the reporting officer. A medical director or other physician who can assure that a designated or appointed person

is regularly reporting the occurrence of these diseases in the organization or counseling and testing site does not have to submit a duplicate report.

(5) School authorities as described in §97.2(e) of this title who are not medical directors meeting the criteria described in this section are exempt from reporting HIV infection, AIDS.

(6) Failure to report a reportable disease is a Class B misdemeanor under the Texas Health and Safety Code, §81.049.

§97.133. Reporting Information for Sexually Transmitted Diseases.

(a) The following information, at a minimum, shall be reported for chancroid and/or syphilis within 72 hours:

(1) laboratories: name, address, city and county of residence, date of birth (month, day, year), sex, race/ethnicity, type of test(s) performed, result of the test(s), date test(s) were performed, physician's name, physician's/clinic's address, and telephone number. Only positive tests shall be reported; and

(2) others as described in §97.132 of this title (relating to Who Shall Report Sexually Transmitted Diseases): name, address, city and county of residence, date of birth (month, day, year), sex, race/ethnicity, stage of diagnosis (syphilis only), pertinent laboratory results, treatment provided, physician's name, physician's/clinic's address, and telephone number.

(b) The following information, at a minimum, shall be reported for gonorrhoea and/or Chlamydia trachomatis infection within 72 hours:

(1) Laboratories: name, city and county of residence, age, date of birth (month, day, year), sex, race/ethnicity, type of test(s) performed, result of the test(s), date test(s) were performed, physician's name, physician's/clinic's address, and physician's/clinic's telephone number. Only positive tests shall be reported.

(2) Others as described in §97.132 of this title: city and county of residence, age, date of birth (month, day, year), sex, race/ethnicity, diagnosis, physician's name, physician's/clinic's address, and physician's/clinic's telephone number if the following conditions are met:

(A) the patient is 12 years of age or older;

(B) there is no in vivo or in vitro evidence of resistance of the causative organism to therapeutic levels of penicillin or other drugs designated by the Commissioner or his/her designee;

(C) the disease is an uncomplicated infection of the urethra, pharynx, cervix, uterus, and/or rectum; and

(D) if the conditions specified in subparagraphs (A)-(D) of this paragraph are not met then the information reported on each case shall be as follows: name, address, city and county of residence, date of birth (month, day, year), sex, race/ethnicity, stage of diagnosis (syphilis only), pertinent laboratory results, treatment provided, physician's name, physician's/clinic's address, and telephone number.

(c) For HIV infection in adults and children 12 years of age and older the following information shall be reported within 30 days:

(1) laboratories: type of test(s) performed, result of the test(s), date test(s) were performed, last four digits of the patient's social security number, date of birth (month, day, year), sex, race/ethnicity, city and county of residence, physician's name, and physician's/clinic's address. Only positive tests shall be reported; and

(2) others as described in §97.132 of this title: date of test, last 4 digits of the patient's social security number, date of birth (month, day, year), sex, race/ethnicity, city and county of residence, physician's name and physician's/clinic's address.

(d) For HIV infection in children under 12 years of age the following information, at a minimum, shall be reported within 30 days:

(1) laboratories: type of test(s) performed, result of the test(s), date test(s) were performed, date of birth (month, day, year), sex, race/ethnicity, name, city and county of residence, physician's name, physician's/clinic's address, and telephone number. Only positive tests shall be reported.

(2) others as described in §97.132 of this title: date of test, date of birth (month, day, year), sex, race/ethnicity, name, city and county of residence, physician's name, physician's/clinic's address, and telephone number.

(e) For acquired immune deficiency syndrome the following information, at a minimum, shall be reported within 30 days:

(1) laboratories: CD4+ T-lymphocyte count of less than 200 cells/microliter or a CD4+ T-lymphocyte percentage of less than 14%, date of birth (month, day, year), sex, race/ethnicity, name, city and county of residence, physician's name, physician's/clinic's address, and telephone number; and

(2) others as described in §97.132 of this title: date of birth (month, day, year), sex, race/ethnicity, name, city and county of residence, CD4+ T-lymphocyte count, physician's name, physician's/clinic's address and telephone number.

§97.134. How To Report Sexually Transmitted Diseases.

(a) Reporting forms and/or information from all entities required to report should be sent to the local health department director where the physician's office, hospital, laboratory, or medical facility is located or if there is none, the reports should be forwarded to the regional director in the region where the physician's office, hospital, laboratory, or medical facility is located.

(b) Reporting forms can be obtained from local health departments, regional offices, and the Texas Department of Health offices in Austin.

(1) Forms to report chancroid, Chlamydia trachomatis infection, gonorrhea, or syphilis may be requested by mail or by telephone from: Texas Department of Health, STD Control Division, 1100 West 49th Street, Austin, Texas 78756, 512/458-7225 or 800/252-8239. Forms shall be provided without charge to individuals required to report.

(2) Forms to report HIV infection and acquired immune deficiency syndrome may be requested by mail or by telephone from: Texas Department of Health, HIV Surveillance Program, 1100 West 49th Street, Austin, Texas 78756, 512/458-7504 or 800/252-8239. Forms shall be provided without charge to individuals required to report.

(c) Laboratories shall submit information weekly. If during any calendar quarter, tests for chancroid, Chlamydia trachomatis infection, gonorrhea, HIV infection, and syphilis are performed and all test results are negative, the person in charge of reporting for the laboratory shall submit a statement to this effect on or before January 5, April 5, July 5, and October 5 following that calendar quarter.

(d) A local health director or regional director may authorize one or more employees under his/her supervision to receive the report from the physician by telephone and to complete the form on behalf of the physician; use of this alternative, if authorized, is at the option of the reporting physician. The local health department director or regional director shall implement a method for verifying the identity of the telephone caller when that person is unfamiliar to the employee.

(e) A local health department director or regional director shall forward to the department at least weekly all reports of cases received by him/her. Transmittal may be by mail, courier, or electronic transmission.

(f) If reporting by mail or courier, the reports for the following specified diseases shall be placed in a sealed envelope addressed to the appropriate program as follows:

(1) For chancroid, syphilis, gonorrhea, Chlamydia trachomatis infection: Texas Department of Health, Sexually Transmitted Disease Control Division, 1100 W. 49th Street, Austin, Texas 78756 and the envelope shall be marked "Confidential." The envelope shall be delivered with the seal unbroken to the Sexually Transmitted Disease Control Division office for opening and processing of the contents.

(2) For HIV infection, acquired immune deficiency syndrome: Texas Department of Health, HIV Surveillance Program, 1100 W. 49th Street, Austin, Texas 78756 and the envelope shall be marked "Confidential." The envelope shall be delivered with the seal unbroken to the HIV Surveillance Program office for opening and processing of the contents. Postage paid envelopes may be obtained by contacting the HIV Surveillance Program at (512) 458-7504. Envelopes are provided without charge.

(g) If reporting by electronic transmission, including facsimile transmission by telephone, the same degree of protection of the information against unauthorized disclosure shall be provided as those of reporting by mail or courier transmittal. The department shall, before authorizing such transmittal, establish guidelines for establishing and conducting such transmission.

§97.135. Serologic Testing During Pregnancy and at Delivery.

(a) Every physician or other person permitted by law to attend a pregnant woman during gestation or at the delivery of the infant resulting from such pregnancy shall, for each woman so attended, take or cause to be taken a sample of the blood of the woman at the time of first examination and visit and submit such sample to a laboratory certified by the Texas Department of Health (department) in accordance with §97.145 of this title (relating to Certification of Laboratories Performing Standard Serologic Tests). If the first examination and visit of the pregnant woman is within 24 hours of delivery of the infant, then this sample of blood will also satisfy the requirements of subsection (b) of this section.

(b) Within 24 hours of delivery, the physician or other person in attendance shall take or cause to be taken a sample of blood from the mother of the infant and submit the sample to a laboratory certified

in accordance with §97.145 of this title.

(c) A person attending the delivery of an infant or fetus who is not authorized by law or regulation to draw blood may obtain the specimen of blood for testing from the umbilical cord attached to the placenta after separation from the infant; otherwise, this person shall arrange for collection of the specimen within 24 hours of delivery by a person authorized to do so.

(d) Every physician or other person required to report births or fetal deaths shall state on each birth or fetal death certificate whether a blood test for syphilis was performed during the pregnancy and on the maternal blood or the umbilical cord blood of the newborn infant.

§97.136. Prophylaxis Against Ophthalmia Neonatorum.

(a) A physician, nurse, midwife, or other person in attendance at childbirth shall apply or cause to be applied to the child's eyes one of the following:

(1) A 1% ophthalmic tetracycline solution (drops) or ointment in each eye within two hours after birth; or

(2) A 0.5% ophthalmic erythromycin solution (drops) or ointment in each eye within two hours after birth; or

(3) Two drops of 1.0% silver nitrate solution in each eye within two hours after birth.

(b) Failure to perform is a Class B misdemeanor under the Texas Health and Safety Code, §81.091(g).

(c) The Texas Department of Health (department) may provide an approved prophylaxis without charge to health-care providers if the newborn's financially responsible adult is unable to pay. No charge shall be made by the health-care provider for the prophylaxis that is received free of charge from the department.

§97.137. Exposure of Health-Care Personnel to Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Infection.

(a) Health-care personnel are at risk of exposure to HIV or AIDS if the personnel are in contact with blood or other body fluids (amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions) or any body fluid visibly contaminated with blood through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membrane during the performance of normal job duties.

(b) Emphasis must be placed on preventing the transmission of HIV or AIDS and not on testing for its presence.

Health-care personnel should follow the guidance given in the publication titled *Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers*," U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, Atlanta, Georgia, February 1989.

(c) Copies of the publications listed in subsection (b) of this section are available upon request from: Bureau of HIV and STD Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

§97.138. Guidelines for Testing Certain Indicted Persons for Certain Diseases.

(a) A court may order a person who is indicted for sexual assault or aggravated sexual assault to submit to a medical procedure or test for presence of sexually transmitted diseases or acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, or other agent of AIDS, under authority of the Code of Criminal Procedure, Article 21.31; and Texas Health and Safety Code, §81.094. The physician who is directed by the court to perform the medical procedure or test shall follow the rules in this section that prescribe the criteria for testing and that respect the rights of the victim of the alleged offense and the rights of the person accused.

(b) In order to protect the privacy of the person being tested, the court, in consultation with the health authority, shall use or arrange the use of a pseudonym for the person on all requests and reports pertaining to the procedure or test. The pseudonym shall be distinct and known only to the physician, the health authority, the person being tested, and the court. The person performing the procedures or test shall make the results available directly to the local health authority.

(c) For AIDS, gonorrhea, HIV infection, genital infections from Chlamydia trachomatis infection, syphilis, and hepatitis (acute or chronic viral type B), the procedures and tests should be those specified in the Texas Department of Health's (department) publication titled "Identification and Confirmation of Reportable Diseases," (pertaining to the reporting of diseases and health conditions) which is by referenced in §97.3(a)(1) of this title (relating to What to Report). For other sexually transmitted diseases, the physician shall request instructions from the Commissioner of Health (Commissioner) or his/her designee.

(d) The health authority shall meet with the victim of the alleged offense and disclose the results of the medical proce-

dures or test; no other person shall be present during the notification unless permitted by the victim. The local health authority shall advise the victim of the medical implications of the test results whether or not the test results are positive or negative. The health authority shall instruct the victim to receive further medical intervention by the victim's personal physician. If the victim resides outside the State of Texas, the notification may be made by telephone.

(e) The health authority shall notify the person accused of the results of the procedure or test and, if the result indicates the presence of a communicable disease, shall instruct the person accused as required by the Communicable Disease Prevention and Control Act, Texas Health and Safety Code, §81.083 or §81.109, and shall perform the appropriate duties and make the reports, as required by §97.3 of this title.

(f) After reporting of the results of the procedure or test to the victim and to the person accused, the health authority shall file an affidavit with the court attesting that he or she has executed the order. Disclosure of the test results to any persons other than the victim and the accused person is prohibited under the Code of Criminal Procedure, Article 21.31.

(g) A health authority may delegate any duty imposed by these sections to a person who is under the health authority's supervision. If a victim or a person tested under this section resides outside the jurisdiction of the local health authority, the notifications required by this section may be made by the local health authority in the jurisdiction where the person resides.

§97.139. Fee for Providing Written Notice of a Positive Human Immunodeficiency Virus (HIV)-Related Test Result to an Applicant for Insurance.

(a) An applicant for insurance must be given written notice of a positive HIV-related test result by a physician designated by the applicant, or in the absence of that designation, by the Texas Department of Health (department). If the department is requested to make this notification:

(1) the form designated by the department for this purpose must be used. Copies of the form and other information concerning notification by the department may be requested from: Bureau of HIV and STD Control, 1100 West 49th Street, Austin, Texas 78756-3199, 512/458-7463; and

(2) the insurer shall pay the department a fee of \$25 to cover the cost of the department providing the written notice to the applicant for insurance.

§97.140. Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job.

(a) Purpose. The purpose of this section is to implement the provisions of the Communicable Disease Prevention and Control Act, §85.116 of the Texas Health and Safety Code.

(b) Counseling and testing.

(1) The counseling and testing should be performed in accordance with the "HIV Serologic Testing and Documentation Guidelines", dated September, 1992. Copies of the Guidelines are available for review in the HIV Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available on request.

(2) A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested.

(3) HIV counseling and testing will be performed on a state employee at the expense of the state agency if:

(A) the employee documents to the agency's satisfaction that he or she may have been exposed to HIV while performing duties of employment of the agency; and

(B) the exposure was a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids known to transmit HIV.

(c) Worker's compensation. To qualify for workers' compensation or similar benefits or compensation, the employee must provide the state agency with a written statement of the date and circumstances of the exposure and document that, within 10 days after the date of the exposure, the employee had a test result that indicated the absence of HIV infection. Further information can be obtained from "Risk Management for Texas State Agencies, Volume III, Workers' Compensation Exposures," which is available from the Risk Management Division, Texas Workers' Compensation Division, 4000 S. IH-35, Southfield Building, Austin, Texas 78704.

§97.141. Fee to Cover the Cost of Providing the Human Immunodeficiency Virus (HIV) Counseling and Testing Course.

(a) Purpose. The purpose of this section is to implement the provisions of the Communicable Disease Prevention and

Control Act, §§85.081-85.089, which requires that the Texas Department of Health (Department) develop and offer a training course for persons providing HIV counseling, and charge a reasonable fee for the course.

(b) Content.

(1) The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(2) The course titled "HIV Serologic Test Counseling and Partner Notification Techniques" is three full days and shall provide participants with a notebook of guides and reference material.

(c) Fee.

(1) The fee will be \$150 for each participant whose affiliation is with a counseling and testing entity that does not contract with the department.

(2) Fees shall be made payable to the Texas Department of Health. All fees are non-refundable and must be received by department prior to participation in the course. Accepted form of payment shall include cashiers check or money order. No other form of payment will be accepted.

(d) Notice. Notice of the training courses will be announced through correspondence to contractors and other appropriate entities from our regional coordinators (HIV trainers). The training course schedule and the contact person will also be published quarterly in the Texas Register.

§97.142. Model Health Education Program/Resource Guide for HIV/AIDS Education of School-Age Children.

(a) The Texas Department of Health has prepared the Model Education Programs required by §§85.004, 85.005, and 85.007 of the Texas Health and Safety Code. It is the department publication titled, "Model Health Education Program/Resource Guide for HIV/AIDS Education of School-Age Children" dated January, 1993. The guide provides resources to develop a model health education program suitable for school-age children and is aimed at preventing the spread of the human immunodeficiency virus (HIV), which is the cause of acquired immunodeficiency syndrome (AIDS).

(b) Copies of the guide are available for review and purchase from the HIV Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Regional HIV Coordinators (TDH) and regional Education Service Centers have inspection copies available.

§97.143. Model HIV/AIDS Workplace Guidelines.

(a) The Department of Health has prepared Model Workplace Guidelines required by §85.012 of the Texas Health and Safety Code. It is the department publication titled, "HIV/AIDS Model Workplace Guidelines" dated December, 1989. The guidelines consist of two parts, as follows:

(1) The first part consists of general workplace guidelines concerning persons with HIV infection and related conditions, including AIDS. All state agencies shall adopt and all private employers are encouraged to adopt HIV-related workplace guidelines that incorporate at a minimum the general workplace guidelines.

(2) The second part consists of more specific workplace guidelines which are an extension of the general workplace guidelines in paragraph (1) of this subsection. All state agencies and contractors with the state who provide direct client services and programs shall adopt and implement workplace guidelines similar to the specific workplace guidelines.

(b) Copies of the guidelines are available for review in the HIV Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available on request.

§97.144. Model Policies for the Handling, Care and Treatment of HIV/AIDS-infected Persons in the Custody of or Under the Supervision of Correctional Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers and District Probation Departments.

(a) The Department of Health has prepared the Model Policies Concerning Persons in Custody required by §85.141 of the Texas Health and Safety Code. It is the department publication titled, "Model Policies for the Handling, Care and Treatment of HIV/AIDS-Infected Persons in the Custody of or Under the Supervision of Correctional Facilities, Law Enforcement Agencies, Fire Departments, Emergency Medical Services Providers and District Probation Departments" dated October, 1990. The model policies consist of three sections, as follows.

(1) The first part consists of policies concerning the provision of education for employees, inmates, and probationers; provision of information and training relating to infection control procedures; provision of infection control supplies, equipment, and training; provision of access to appropriate services; and provision of confidentiality of medical records relating to HIV infection.

(2) The second part consists of policies concerning potential exposure to HIV infection while performing job duties.

(3) The third part consists of policies concerning HIV testing, segregation, and isolation of detainees in correctional facilities or specified supervisory entities. All specified entities must develop and implement HIV/AIDS workplace policies similar to the model policies.

(b) Copies of the policies are available for review in the HIV Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available upon request.

§97.145. Certification of Laboratories Performing Standard Serologic Tests.

(a) A laboratory performing a standard serologic test for syphilis shall file an application for certification by the Texas Department of Health (department) on Form G-62 Syphilis Serology Approval Program Registration. This application may be obtained without charge from the Bureau of Laboratories, Texas Department of Health (department), 1100 West 49th Street, Austin, Texas 78756. Completion of an application form is required only for initial certification providing that the laboratory remains certified. If a laboratory has been decertified or has withdrawn from certification, reapplication is necessary in each instance. Any laboratory certified by the department as of August 29, 1983, under authority of the Texas Health and Safety Code, §81.090, shall be considered to have filed an application and been certified under this section.

(b) A printed certification of approval shall be issued and shall remain the property of the department and must be surrendered within seven days if the laboratory is decertified for any reason or withdraws voluntarily from certification.

(c) The application shall indicate one or two standard serologic tests for which certification is desired. No more than two tests shall be certified for each laboratory. At least one test must be one of the following: the Venereal Disease Research Laboratory (VDRL) Slide Test; the Rapid Plasma Reagin (RPR) 18mm Circle Card Test; the Fluorescent Treponemal Antibody-Absorbed (FTA-ABS) Test; the Automated Reagin Test (ART); the Plasmacrit Test (PCT); the Reagin Screen Test; the Microhemagglutination-Treponema Pallidum (MHA-TP) Test; the Rapid Plasma Reagin (RPR) Slide Test; or such other test as may be designated by the Commissioner of Health (commissioner). The commissioner or his/her designee is authorized to add to, delete, or modify this list of tests at his/her discretion.

(d) An applicant shall participate in an approved program of proficiency testing in syphilis serology and identify the agency sponsoring such a program; enrollment in such a program shall be a prerequisite to certification. The following are sponsors of approved programs of proficiency testing: United States Public Health Service Centers for Disease Control; College of American Pathologists; and American Association of Bioanalysts. The commissioner is authorized to approve other programs and sponsors on an individual basis. The department may certify laboratories of military installations that may participate in proficiency testing programs sponsored by the federal government; military laboratories desiring such certification shall agree to be bound by this section.

(e) Once a laboratory has been certified by the department, it shall test all specimens provided by the sponsor as part of the proficiency testing program and shall inform the sponsor to provide the Chief, Bureau of Laboratories of the department, no less than once each quarter with documentation of satisfactory performance. A grade of 75 percent or better on three out of four evaluation sets distributed by the proficiency testing sponsor shall be the minimal level of satisfactory performance. No minimal or maximal number of specimens is required for annual testing but the full number of specimens distributed by the proficiency testing program sponsor must be tested.

(f) Certified laboratories shall be issued a Laboratory Identification Number by the department. This number shall be furnished to the proficiency testing program sponsor by the certified laboratory and shall be shown on all reports and correspondence with the department.

(g) The department shall mail a complete list of approved laboratories to all county clerks and a list of any additions, suspensions, or revocations of proficiency certification at least annually.

(h) Certification is given to a laboratory and not to serologist or to the laboratory director. A worker moving from an approved laboratory to one not on the approved list will not confer certification on the new laboratory.

(i) A certified laboratory that fails in performance on proficiency testing specimens or fails to provide evidence of satisfactory performance in any twelve-month period may be dropped from the list of certified laboratories after an opportunity for a hearing in accordance with Chapter 1 of this title (relating to Board of Health) the Department's Formal Hearing Procedures. Notification of that fact shall be sent to county clerks. Reapplication will not be permitted for two months unless the labora-

tory director certifies in writing that there has been a change in staff or that pertinent training has been provided to the staff.

(j) Any change in address, location, and standard serologic tests performed shall be reported to the Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Changes in personnel need not be reported. It is the responsibility of the laboratory director to satisfy himself or herself about the ability of new employees before they are permitted to perform standard serologic tests.

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 October 1, 1993.

TRD-9329740

Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Proposed date of adoption: December 17, 1993

For further information, please call: (512) 458-7463

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TITLE 28. INSURANCE
Part I. Texas Department
of Insurance

Chapter 5. Property and
Casualty

Subchapter E. Texas Catastrophe
Property Insurance As-
sociation

Texas Standard Policy-Wind-
storm and Hail

• **28 TAC §5.4101**

The State Board of Insurance of the Texas Department of Insurance and the Commissioner of Insurance, at a public hearing under Docket Number 2065, scheduled for 9:00 a.m. November 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, will consider proposed amendment to §5.4101, concerning the adoption by reference of an amended Texas Catastrophe Property Insurance Policy for windstorm and hail. The proposed amendments to the application portion of the policy form are necessary to incorporate recent legislative changes to the Insurance Code, Article 21.49, relating to indirect loss coverages to be provided by the Texas Catastrophe Property Insurance Association (TCPIA), to obtain zip code information, to remove obsolete provisions, and to reduce paperwork for claim reporting. The proposed amendments do not change any currently approved policy provisions. It is proposed that the application portion of the policy be changed to provide proper references to the type of companion

policy being issued in the voluntary market that excludes windstorm and hail coverages. Recent amendments to Article 21.49 of the Insurance Code, enacted in House Bill 1461 by the 73rd Texas Legislature, mandate that the TCPIA provide coverages for indirect losses caused by windstorm and hail when those coverages are excluded in the companion policy being issued in the voluntary market. It is necessary for the TCPIA to have specific information regarding the type of companion policy issued in the voluntary market in order for the proper indirect loss coverage endorsement to be attached to the TCPIA policy. In addition, the application form is being revised to provide a space for a zip code for purposes of analysis of location of risks, to delete part 2 of Question III on the application regarding the property being behind the seawall because the existence of a seawall no longer has a bearing on risks insured through the TCPIA, and to add an additional carbon copy of the application to be used as a claim reporting form to eliminate the need for an agent to issue a separate notice of loss with policy information to be submitted to the company. The proposed amendments also include updating the memorandum copy of the policy by replacing obsolete policy provisions on the back of the memorandum copy of the policy declaration page. The new policy form as amended would become effective December 1, 1993.

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

Mr. Anderson has also determined that for each year for the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section is the assurance that Texas coastal policyholders are being provided the correct windstorm and hail indirect loss coverages by the TCPIA policy in relation to the windstorm and hail indirect loss coverages excluded from the companion policy written in the voluntary market, that zip code information will be available for the analysis of location of risks, that obsolete provisions will be removed, and claim reporting paperwork will be reduced.

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

The amendments are proposed pursuant to the Insurance Code, Articles 21.49 and 1.04 and Texas Civil Statutes, Article 6252-13a, §4

and §5. Article 21. 49, §5A authorizes the State Board of Insurance to issue any orders which it considers necessary to carry out the purposes of Article 21.49. Article 21.49, §7 requires the State Board of Insurance to prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Texas Catastrophe Property Insurance Association (TCPA) and to promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms. Article 21.49, §8 authorizes the State Board of Insurance to approve every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing for use by the TCPA. Article 21.49, §8B requires the TCPA to provide coverage for indirect losses caused by windstorm or hail when a companion policy issued in the voluntary market specifically excludes such coverage and authorizes the promulgation of rules. Section 1.23 of House Bill 1461 enacted by the 73rd Texas Legislature provides that as of September 1, 1993, that the State Board of Insurance relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and rules related to these activities and that the Board may exercise such authority until no later than September 1, 1994. Texas Civil Statutes, Article 6252-13a, §§4 and 5 (Administrative Procedure Act, 73rd Legislature, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737, 738 (to be codified at Government Code, Title 10, Chapter 2001)) 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 article of the Insurance Code is affected by this rule: Insurance Code, Article 21.49.

§5.4101. *Texas Catastrophe Property Insurance Policy for Windstorm and Hail.* The State Board of Insurance adopts by reference the Texas catastrophe property insurance policy for windstorm and hail as amended December 1, 1993 [January 1, 1992]. This document is published by and available from the Texas Catastrophe Property Insurance Association, P. O. Box 2930, Austin, Texas 78769. It may also be obtained by contacting the Property and Casualty Division, Mail Code 103-1A, Texas Department of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104.

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 October 1, 1993.

TRD-9329736

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

Proposed date of adoption: November 8, 1993

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

Subchapter E. Texas Catastrophe Property Insurance Association

Standard Policy Forms—Windstorm and Hail

• 28 TAC § 5.4201

The State Board of Insurance of the Texas Department of Insurance and the Commissioner of Insurance, at a public hearing under Docket Number 2063, scheduled for 9:00 a.m. November 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, will consider a proposed amendment to §5.4201, concerning nine new endorsements for windstorm and hail insurance written by the Texas Catastrophe Property Insurance Association (TCPA) and a revised TCPA replacement cost endorsement for household goods. The new extensions of coverage for windstorm and hail endorsements, which must be attached to the TCPA policy, are necessary to provide coverage for certain indirect losses caused by windstorm or hail. Recent amendments to Article 21. 49 of the Insurance Code, enacted under House Bill 1461 by the 73rd Texas Legislature, mandate that the TCPA provide coverages for indirect losses caused by windstorm or hail when those coverages are excluded in the companion policy being issued in the voluntary market. The proposed endorsements and indirect loss coverages provided by each endorsement are as follows:

1.TCPA Form-310 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages and additional living expense coverage when the companion homeowners policy (Form HO-A) has been issued excluding coverages provided by this endorsement.

2.TCPA Form-315 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages, additional living expense coverage, and wind-driven rain coverage to dwellings when the companion homeowners policy (Form HO-B) has been issued excluding coverages provided by this endorsement.

3.TCPA Form-320 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages, additional living expense coverage, and wind-driven rain coverage to insured property when the companion homeowners policy (Form HO-C) has been issued excluding coverages provided by this endorsement.

4.TCPA Form-325 (HO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverages and additional living expense coverage when the companion homeowners policy (Forms HO-BT or HO-CT) has been issued excluding coverages provided by this endorsement.

5.TCPA Form-330 (TDP and TFR), Extensions of Coverage, Windstorm and Hail, pro-

vides consequential loss coverage when the companion dwelling policy (Forms TDP-1 or TDP-2) or the companion farm and ranch policy (Forms TFR-1 or TFR-2) has been issued excluding coverage provided by this endorsement.

6.TCPA Form-335 (TDP and TFR), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage, additional living expense coverage, and wind-driven rain coverage to dwellings when the companion dwelling policy (Form TDP-3) or the companion farm and ranch policy (Form TFR-3) has been issued excluding coverages provided by this endorsement.

7.TCPA Form-340 (FRO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage and additional living expense coverage when the companion farm and ranch owners policy (Form FRO-A) has been issued excluding coverages provided by this endorsement.

8.TCPA Form-345 (FRO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage, additional living expense coverage, and wind-driven rain coverage to dwellings when the companion farm and ranch owners policy (Form FRO-B) has been issued excluding coverages provided by this endorsement.

9.TCPA Form-350 (FRO), Extensions of Coverage, Windstorm and Hail, provides consequential loss coverage, additional living expense coverage, and wind-driven rain coverage to insured property when the companion farm and ranch owners policy (Form FRO-B with Form FRO-480 attached) has been issued excluding coverages provided by this endorsement. In addition, TCPA Form 365, Replacement Cost Endorsement—Household Goods, is proposed to be revised to reflect the same replacement cost coverage for household goods as is currently provided in the voluntary market on standard residential property policies. This revision is necessary to ensure that TCPA policyholders are being provided equivalent replacement cost coverage on the TCPA policy providing windstorm and hail coverage as is available on the standard residential property policy issued in the voluntary market covering other perils. The proposed new endorsements and the revised replacement cost endorsement would become effective December 1, 1993.

Lyndon Anderson, associate commissioner, property and casualty program, has determined that for each year of the first five years the new section will be in effect, there will be no fiscal implications to state or local government nor to small business as a result of enforcing or administering the section, and there will be no effect on local employment or local economy.

Mr. Anderson has also determined that for each year for the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section is a greater availability of residential insurance in the voluntary market for Texas coastal residents since all windstorm and hail coverage can be excluded from the residential policy written in the voluntary market and coverage for both direct and indirect losses caused by

windstorm and hail will be provided under the TCPIA policy. Also, the revised replacement cost endorsement for household goods will provide TCPIA policyholders with equivalent replacement cost coverage on the TCPIA policy providing windstorm and hail coverage as is available on the standard residential property policy issued in the voluntary market covering other perils.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC #113-2A, Austin, Texas, 78714-8104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC #103-1A, Austin, Texas, 78714-9104. Any request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed pursuant to the Insurance Code, Articles 21.49 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 21.49, §5A authorizes the State Board of Insurance to issue any orders which it considers necessary to carry out the purposes of Article 21.49. Article 21.49, §7 requires the State Board of Insurance to prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Texas Catastrophe Property Insurance Association (TCPIA) and to promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms. Article 21.49, §8 authorizes the State Board of Insurance to approve every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing for use by the TCPIA. Article 21.49, §8B requires the TCPIA to provide coverage for indirect losses caused by windstorm or hail when a companion policy issued in the voluntary market specifically excludes such coverage and authorizes the promulgation of rules. Section 1.23 of House Bill 1461 enacted by the 73rd Texas Legislature provides that as of September 1, 1993, that the State Board of Insurance relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and rules related to these activities and that the Board may exercise such authority until no later than September 1, 1994. Texas Civil Statutes, Article 6252-13a, §4 and §5 (Administrative Procedure Act, 73rd Legislature, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737, 738 (to be codified at Government Code, Title 10, Chapter 2001)) 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 article of the Insurance Code is affected by this rule: Insurance Code, Article 21.49

§5.4201. *Standard Texas Catastrophe Property Insurance Association Forms for Windstorm and Hail.* The State Board of Insurance adopts by reference the standard Texas Catastrophe Property Insurance Association forms—Windstorm and Hail. Specimen copies of these forms are available from the Texas Catastrophe Property Insurance Association, P. O. Box 2930, Austin, Texas, 78767. They are also available from the Property and Casualty Program [Section], Texas Department [State Board] of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104. The forms are more specifically identified as follows:

- (1)-(2) (No change).
- (3) TCPIA Form 365—replacement cost endorsement—household goods. Effective December 1, 1993 [November 1, 1985].
- (4)-(12) (No change).
- (13) TCPIA Form 310 (HO)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (14) TCPIA Form 315 (HO)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (15) TCPIA Form 320 (HO)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (16) TCPIA Form 325 (HO - Tenant)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (17) TCPIA Form 330 (TDP and TFR)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (18) TCPIA Form 335 (TDP and TFR)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (19) TCPIA Form 340 (FRO)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (20) TCPIA Form 345 (FRO)—extensions of coverage, windstorm and hail. Effective December 1, 1993.
- (21) TCPIA Form 350 (FRO)—extensions of coverage, windstorm and hail. Effective December 1, 1993.

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 October 1, 1993.

TRD-9329738

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

Earliest possible date of adoption: November 8, 1993

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

Subchapter E. Texas Catastrophe Property Insurance Association Manual

• 28 TAC §5.4501

The State Board of Insurance of the Texas Department of Insurance and the Commissioner of Insurance, at a public hearing under Docket Number 2064, scheduled for 9:00 a.m. November 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, will consider a proposed amendment to §5.4501, concerning the adoption by reference of a new manual of rules governing the writing of windstorm and hail insurance through the Texas Catastrophe Property Insurance Association (TCPIA). The new manual is necessary to incorporate new rules into the TCPIA manual based on recent amendments to the Insurance Code, Article 21.49, enacted in House Bill 1461 by the 73rd Texas Legislature, that amended the rating for residential risks insured through the TCPIA and mandated that the association provide coverages for indirect losses caused by windstorm and hail. The proposed manual changes reflect the proper method of rating an association policy when insuring a dwelling risk using the board approved benchmark rates with an added factor not greater than +30%, but not less than +25%. The proposed manual changes also provide for the attachment of endorsements providing coverages for indirect losses caused by windstorm and hail and provide the appropriate rating for such coverages. In addition, the manual has been revised to incorporate all changes in the manual rules that have previously been approved by the State Board of Insurance and reformatted and simplified. The new manual as amended would become effective December 1, 1993.

Lyndon Anderson, associate commissioner, property and casualty program, has determined that for each year of the first five years the new section will be in effect, there will be no fiscal implications to state or local government nor to small business as a result of enforcing or administering the section, and there will be no effect on local employment or local economy.

Mr. Anderson has also determined that for each year for the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section is a greater availability of residential insurance in the voluntary market for Texas coastal residents since all windstorm and hail coverage will be excluded from the residential policy written in the voluntary market and coverage for both direct and indirect losses caused by windstorm and hail will be provided in the TCPIA policy. The public will also benefit from the reformatting and simplification of the TCPIA manual for easier use.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk,

Texas Department of Insurance, P. O. Box 149104, MC #113-2A, Austin, Texas, 78714-8104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC #103-1A, Austin, Texas, 78714-9104. Any request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed pursuant to the Insurance Code, Articles 21.49 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 21.49, §5A authorizes the State Board of Insurance to issue any orders which it considers necessary to carry out the purposes of Article 21.49. Article 21.49, §7 requires the State Board of Insurance to prepare endorsements and forms applicable to the standard policies which it has promulgated providing for the deletion of coverages available through the Texas Catastrophe Property Insurance Association (TCPIA) and to promulgate the applicable reduction of premiums and rates for the use of such endorsements and forms. Article 21.49, §8 authorizes the State Board of Insurance to approve every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing for use by the TCPIA. Article 21.49, §8B requires the TCPIA to provide coverage for indirect losses caused by wind-storm or hail when a companion policy issued in the voluntary market specifically excludes such coverage and authorizes the promulgation of rules. Section 1.23 of House Bill 1461 enacted by the 73rd Texas Legislature provides that as of September 1, 1993, that the State Board of Insurance relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and rules related to these activities and that the Board may exercise such authority until no later than September 1, 1994. Texas Civil Statutes, Article 6252-13a, §4 and §5 (Administrative Procedure Act, 73rd Legislature, Regular Session, Chapter 268, §1, 1993, Texas General Laws 737, 738 (to be codified at Government Code, Title 10, Chapter 2001)) 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 article of the Insurance Code is affected by this rule the Insurance Code, Article 21.49.

§5.4501. *Rules and Regulations for Texas Catastrophe Property Insurance Association (association).* The Texas Department of Insurance adopts by reference a rules manual for the association as amended effective December 1, 1993 [June 1, 1992]. Copies of the rules manual may be obtained by contacting the Property/Casualty Division, Mail Code 103-1A, Texas Department

of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104.

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 October 1, 1993.

TRD-9329737

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: November 8, 1993

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 293. Water Districts

Appeal of Decision Regarding Facilities Constructed for a Municipal Utility District

• 30 TAC §293.180

The Texas Natural Resource Conservation Commission (Commission) proposes new §293.180, concerning appeal of a district board decision.

Section 293.180 provides for appeal of the decision of a board of directors of a municipal utility district concerning the cost, purchase or use of facilities constructed for the district. It establishes the procedure for filing an appeal, outlines minimum criteria to be considered by the Commission, and includes a mechanism for the agency to recover the costs of processing an appeal, and provides a public hearing notice form.

Stephen Minick, division of budget and Planning, has determined that for the first five-year period the section as proposed is in effect there will be fiscal implications anticipated as a result of enforcement or administration of the section. There will be an increase in both cost and revenue to state government. This section provides for the deposit of funds by parties affected by the section to ensure the recovery of costs by the commission. Increased costs will be determined by the number and nature of appeals filed under this section and cannot be estimated at this time. These costs should be equivalent to and offset by increased revenues collected for an appeal. Fiscal implications for local governments are associated with potential costs of public notice and representation in the hearing process. These costs cannot be estimated at this time and will vary on a case-by-case basis depending on the complexity of the case, the issues in question, the number of parties and the number of property owners to whom notice must be provided.

Mr. Minick also has determined that for the first five-year period this section is in effect the public benefit anticipated as a result of enforcement of and compliance with the section will be improvements in public participation in the management of municipal utility districts and the expenditure of district funds. There are no anticipated costs to small businesses. There are no anticipated economic costs to persons required to comply with the section as proposed.

Written comments on the proposal may be submitted to Samuel W. Jones, P.E., District Administration Section, Water Utilities Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087. In order to be considered, written comments must be received by the Water Utilities Division no later than 5:00 p.m., 30 days after the date of publication of this proposal. In addition, a public hearing will be held on November 3, 1993, at 10:00 a.m. in Room 1149 of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin.

The new section is proposed under the Texas Water Code, (Vernon 1992), §§5.103, 5.105, and 5.235, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, to establish and approve all general policy of the Commission, and to collect statutory fees from persons filing various applications with the Commission.

§293.180. *Appeal of a Decision of the Board of a Municipal Utility District Regarding Facilities Constructed for the District.*

(a) A person aggrieved by a decision of a board of directors of a Municipal Utility District operating under Chapter 54 of the Water Code may appeal a decision that involves the cost, purchase, or use of improvements constructed by a developer for the district to the commission. Before such an appeal will be considered the following must be submitted:

(1) a petition signed by either 10% of the property owners affected by the decision or a person(s) who own at least 10% of the district acreage as reflected by the county tax records, must be filed with the commission seeking appropriate relief within 30 days after the date of the decision. The petition shall contain:

(A) a statement describing the nature of the dispute and how the board's decision affects the petitioner; and

(B) evidence that the decision involves the cost, purchase or use of improvements constructed by a developer for the district;

(2) a deposit in the amount of \$10,000 to be applied toward the commission's estimated costs to conduct the hearing on the appeal;

(3) for appeals involving the cost or purchase of facilities, complete documentation of such cost and justification for the facilities;

(4) a certified copy of minutes of the board meeting(s) which include the decision being appealed;

(5) a cost summary itemizing any monetary claims by the aggrieved person;

(6) documentation to support items included in the cost summary;

(7) any other information as the executive director may require.

(b) Notice Actions and Requirements.

(1) The chief clerk of the commission shall set the petition for hearing, and the district shall issue notice thereof.

(2) The district shall issue notice by sending, not later than the 30th day before the date of the hearing, notice of the hearing to each owner of property within the district, as reflected by the county tax rolls as of the date of filing the application with the commission, unless good cause is shown why such notice should not be given. The district shall obtain a "certificate of mailing" from the United States Post Office to verify such mailing. Ownership of the property shall be certified by the county tax assessor/collector from the county tax rolls as of the date of filing of the application with the commission.

(c) Commission Actions.

(1) After notice and hearing, the commission shall render a written decision granting or denying the petition, in whole or in part.

(2) In rendering its decision, the commission shall consider:

(A) the suitability of and necessity for the facilities;

(B) the reasonableness of the cost of the facilities;

(C) the economic viability of the district; and

(D) any other relevant evidence.

(3) A record of actual cost for the commission to conduct the hearing shall be maintained by the Executive Director and the Office of Hearings Examiners. An

amount for indirect costs shall also be included. The commission may deduct its cost from the deposit. If the commission's cost exceeds the amount of the deposit, it may require payment of the additional amount from the petitioner prior to rendering its decision. If the commission's cost is less than the amount of the deposit, the surplus amount shall be returned to the petitioner.

(4) If the commission finds that the district erred in its decision, it may direct the district to reimburse the petitioner(s) all or part of the deposit which the petitioner paid.

(d) Form of Notice of a Public Hearing on Appeal of a Decision of the Board. The following form should be used to provide notice of the public hearing on a petition to appeal a decision of the board of a municipal utility district concerning the cost, purchase or use of facilities constructed for the district.

NOTICE ON A PUBLIC HEARING FOR CONSIDERATION OF AN APPEAL OF A DECISION OF THE BOARD OF

MUNICIPAL UTILITY DISTRICT

Notice is hereby given that a Public Hearing will be held at _____ o'clock, on _____, before an examiner of the Texas Natural Resource Conservation Commission (the "Commission"), in Room _____ of _____, (Building Name), _____ (address), Austin, Travis County, Texas, to consider a Petition Appealing a Decision of the Board of _____ District (the "District") shown in Exhibit A. The petition is filed and the hearing is held under the authority of V.T.C.A., Water Code Chapter 54, 31 Texas Administrative Code, Section 293.180 and under the procedural rules of the Commission.

The decision appealed was _____ (state decision of the board).

All affected persons who wish to appear at the hearing and to discuss any factors relevant to the petition are urged to do so. Affected persons appearing at the hearing may be granted party status and thereby have the opportunity to present evidence and cross-examine the witnesses of each party. Persons wishing to present information should appear in person or by a representative. Any person who appears at the hearing and who represents more than himself or herself should have available at the hearing a list of those persons he or she represents. Information offered in written form without the writer's presence will be noted but will not be considered as evidence since the right to cross-examine is absent.

The record in this proceeding will include sworn testimony and other evidence taken at the public hearing, if necessary. The hearing may be continued from time to time and place to place, if necessary, to develop all relevant evidence hearing on the subject of the hearing.

Information concerning any procedures of the hearing may be obtained by contacting Kerry Sullivan, Assistant Chief Hearings Examiner, at Office of Hearings Examiners, P.O. Box 13087, Austin, Texas 78711, or by calling (512) 463-7875. Information concerning public participation in the hearing may be obtained by contacting the Public Interest Counsel at the same address or by calling (512) 908-6363. Information may also be obtained from _____, Staff Attorney, at the same address or by calling (512) 463-8069.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf or hearing impaired, readers, large print, or braille) are requested to contact the Office of Hearings Examiners at (512) 463-7875 or 1-800-RELAY-TX (TDD) at least two (2) work days prior to the hearing so that appropriate arrangements can be made.

Issued this the _____ day of _____, 19__.

Gloria A. Vasquez, Chief Clerk
(Seal)

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 October 4, 1993.

TRD-8329746 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 463-8069



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XV. Texas Low-Level Radioactive Waste Disposal Authority

Chapter 450. Planning and Implementation Fees

Subchapter A. Assessment of Fees

• 31 TAC §§450.1-450.4

The Texas Low-Level Radioactive Waste Disposal Authority proposes amendments to §§450.1-450.4, concerning the adoption of planning and implementation fees for low-level radioactive waste generators for the state's fiscal years 1994-1995. The amended sections assess the fees, specifies which entities should pay the fees, and provides for the collection and deposit of fees in the state treasury.

Tim Schaffner, director of finance, has determined that there will be fiscal implications as a result of enforcing or administering the sections. There will be no additional cost to state government for 1994 or 1995, and the sections will not be in effect between 1996 and 1998. There will be no reduction in cost to state government for 1994 or 1995, and the sections will not be in effect between 1996 and 1998. There is an estimated increase in state government revenue for 1994 of \$6,586,412, and for 1995 of \$6,586,412.

There will be no additional cost to local government for 1994 or 1995, and the sections will not be in effect between 1996 and 1998. There will be no reduction in cost to local government for 1994 or 1995, and the sections will not be in effect between 1996 and

1998. There is no estimated loss or increase to local government for 1994 or 1995, and the sections will not be in effect between 1996 and 1998.

No costs will be incurred for compliance with the sections for small or large businesses other than the payment of the fees in 1994 and 1995.

Mr. Schaffner also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be that the waste generators, rather than the general revenue of the state, will provide the funding of the low-level radioactive waste disposal program.

The anticipated economic cost to waste generators who are required to comply with the sections as proposed will be: \$6,586,412 in 1994 and \$6,586,412 in 1995. The sections will not be in effect during 1996-1998.

Comments on the proposal may be submitted to Lee H. Mathews, Deputy General Manager and General Counsel, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752.

The amendments are proposed under the Health and Safety Code, §402.054, which provides the Texas Low-Level Radioactive Waste Disposal Authority with the authority to adopt rules, standards, and orders necessary to properly carry out the Texas Low-Level Radioactive Waste Disposal Authority Act, and specifically, to implement planning and implementation fees.

The amended sections affect the Texas Health and Safety Code, §402.054, and §405.2721.

§450.1. Purpose. The purpose of this subchapter [chapter] is to adopt, for this state's fiscal years 1994-1995 [1992-1993],

planning and implementation fees to fund the Authority's estimated expenditures for those fiscal years. [in the amount of:

[(1) \$10,000,000 to recover the authority's expenses incurred prior to September 1, 1991, and

[(2) \$9,034,098 to recover the authority's estimated legislative appropriations for the period September 1, 1991, through August 31, 1993.]

§450.2. Applicability.

(a) This subchapter [chapter] applies to:

(1) persons licensed by the United States Nuclear Regulatory Commission to own or operate a production or utilization facility or other fixed nuclear facility in this state; and

(2) persons required to be licensed by the Texas Department of Health [department] to possess or use radioactive material and who generated and shipped or caused to have shipped by others, 7.5 cubic feet or more of radioactive material to a licensed low-level waste disposal facility during the period January 1, 1992 [1990] through December 31, 1992 [1991].

(b) This subchapter [chapter] does not apply to health care providers or institutions of higher education.

§450.3. Assessed Fees.

(a) Fees shall be assessed to persons subject to §450.2(a)(1) of this title (relating to Applicability), as follows:

	FY 1994	FY 1995	Totals
Houston Lighting and Power as managing partner of the South Texas Project	\$2,221,860	\$4,206,099	\$6,427,959
Texas Utilities as owner of the Comanche Peak Project	\$2,221,860	\$4,206,099	<u>\$6,427,959</u>
			<u>\$12,855,918</u>

	[FY 1992	FY 1993	Totals
Houston Lighting and Power as managing partner of the South Texas Project	\$3,568,893	\$5,948,156	\$9,517,049
Texas Utilities as owner of the Comanche Peak Project	\$3,568,893	\$5,948,156	<u>\$9,517,049</u>
			<u>\$19,034,098</u>

(b) For each year of this state's fiscal years 1994-1995 [1992-1993], fees shall be assessed to persons subject to §450.2(a)(2) as follows: \$500 plus an additional \$1.00 for every cubic foot in excess of 7.5 cubic feet of radioactive material generated and shipped.

(c) For purposes of determining shipment volumes under subsection (b) of this section, the board shall rely on the manifest information management system data-base maintained by the United States Department of Energy and/or the Texas manifest reporting system maintained by the Texas Department of Health [department], as appropriate, and these records shall be determinative for purposes of assessing fees under subsection (b) of this section.

§450.4. Collection of Fees.

(a) Fees assessed by the board shall be collected by the Texas Department of Health [department] and deposited in the state treasury in accordance with the Health and Safety Code, §§401.301, 401.306, and 402.0721.

(b) Fees assessed under this chapter shall be payable as follows:

(1) for state fiscal year 1994, one payment equal to the 1994 assess-

ment on or before March 1, 1994 [1992, equal quarterly installments on or before January 1, 1992; April 1, 1992; and July 1, 1992];

(2) for state fiscal year 1995, one payment equal to the 1995 assessment on or before March 1, 1995 [1993, one payment on or before October 1, 1992 in an amount equal to a quarterly installment under paragraph (1) of this subsection, and one payment on or before June 1, 1993 in an amount equal to the fee due in fiscal year 1993].

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 29, 1993.

TRD-9329614

Lee H. Mathews
Deputy General Manager
and Legal Counsel
Texas Low-Level
Radioactive Waste
Disposal Authority

Proposed date of adoption: November 11, 1993

For further information, please call: (512) 451-5292

◆ ◆ ◆

• 31 TAC §§450.11-450.19

The Texas Low-Level Radioactive Waste Disposal Authority proposes new §§450.11-450.19, concerning the expenditure by a county commissioners court of funds generated by surcharges on planning and implementation fees. The new subchapter defines the types of local public projects that are eligible for funding, requires the adoption of a master plan for local projects, and establishes the procedures that a county commissioners court must follow when it receives an application for funding of a local public project.

Tim Schaffner, director of finance, has determined that there will be fiscal implications as a result of enforcing or administering the sections. There will be estimated additional costs to state government of \$972,390 in 1994; \$972,390 in 1995; \$2,465,686 in 1996; \$962,402 in 1997; and \$996,206 in 1998. There will be estimated increases in revenue to state government of \$972,390 in 1994; \$972,390 in 1995; \$2,465,686 in 1996; \$962,402 in 1997; and \$996,206 in 1998.

There will be estimated additional costs to local government of \$4,673 in 1994; \$6,908 in 1995; \$7,153 in 1996; \$7,411 in 1997; and \$7,682 in 1998. There will be estimated increases in revenue to local government of \$1,006,423 in 1994; \$1,006,423 in 1995; \$2,551,985 in 1996; \$996,086 in 1997; and \$1,031,073 in 1998.

The cost of compliance with the sections for small businesses will be \$467. There will be

no difference in the cost of compliance for small business compared to the cost of compliance for large businesses affected by the sections.

Mr. Schaffner, also has determined that for each year of the first five years the sections as proposed are in effect that the public benefits anticipated as a result of enforcing the sections as proposed will be that a portion of the planning and implementation money that the Authority receives for developing a low-level waste disposal site will flow to the county to develop local projects, such as fire and medical services that benefit the county and local communities.

The anticipated economic cost to individuals who are required to comply with the sections as proposed will be \$4,670 in 1994; \$4,908 in 1995; \$5,153 in 1996; \$5,411 in 1997; and \$5,682 in 1998.

Comments on the proposal may be submitted to Lee H. Mathews, Deputy General Manager and General Counsel, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752.

The new sections are proposed under the Health and Safety Code, §402.054 and §402.252, which provide the Texas Low-Level Radioactive Waste Disposal Authority with the authority to adopt rules, standards, and orders necessary to properly carry out the Texas Low-Level Radioactive Waste Disposal Authority Act, and to provide guidelines for the expenditure of planning and implementation fees surcharges.

The following is the code that is affected by this rule: Texas Health and Safety Code, §402.054 and §405.252.

§450.11. Purpose. The purpose of this subchapter is to adopt guidelines under the Health and Safety Code, §402.252, for the expenditure by the host-county commissioners court or its contractors of funds generated by planning and implementation fee surcharges and waste disposal fees.

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

Local Public Project—Any undertaking, including traditional services and functions, that benefits the public, including the following:

- (A) police protection and detention services;
- (B) fire protection;
- (C) streets, roads, and drainage;
- (D) sewage and water systems;

(E) medical and emergency response facilities and/or services;

(F) public health and welfare;

(G) parks and recreation;

(H) library and museum services, facilities, and capital improvements;

(I) records center services;

(J) municipal waste disposal;

(K) housing development activities;

(L) industrial development activities;

(M) job training and social service support programs;

(N) organizational training and technical assistance;

(O) small business development activities;

(P) public education, including program development, facilities, and capital improvements; and

(Q) convention and/or community facilities.

Public Non-Profit Corporation—A non-profit corporation that has been duly incorporated in Texas to do business in the state and has received a tax exempt status under §501(c)(3) of the United States Internal Revenue Code.

Entities—Those organizations which have been organized in the State of Texas to do business in the state or have been classified as political subdivisions.

Host-County Commissioners Court or Commissioners Court—The commissioners court of Hudspeth County.

Board—The Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority.

§450.13. Restriction on Surcharge Use. Planning and implementation surcharges assessed by the board for the 1994-1995 biennium only under the Health and Safety Code, §402.2721, must be used only for local public projects that are located within 10 miles of the Authority's disposal facility site.

§450.14. Plan for Local Public Projects.

(a) Prior to board consideration of funding for individual local public projects, the commissioners court shall submit to the board a master plan for providing local public projects.

(b) The plan should:

(1) propose local public projects that will enhance the quality of life;

(2) include local public projects that will enhance educational opportunities;

(3) provide for community services which are currently unavailable or are limited;

(4) improve the existing infrastructure;

(5) encourage cooperation with lenders and community based organizations to maximize the leverage potential of local financial and staff resources;

(6) support and encourage comprehensive solutions to community and area-wide economic needs; and

(7) provide projects that have the potential to become self-sufficient or attract continuing financial support.

(c) At a minimum, the plan should include:

(1) a listing of local public projects proposed for funding;

(2) projected costs and schedule of implementation;

(3) available alternative or supplemental funding, including state or federal matching funds; and

(4) priority ranking of each proposed project.

(d) The board may approve, disapprove, amend, or specify any conditions for approval of the plan as may be required.

(e) The commissioners court shall select local public projects for funding from the plan's priority list or as agreed to by the board.

§450.15. Scope and Content of Local Public Project Proposals.

(a) Any proposed local public project must address the following

(1) planning;

(2) start-up;

(3) replication;

(4) expansion;

(5) training and technical assistance; and

(6) administrative costs

(b) Proposed local public projects will not be approved which:

- (1) primarily benefit individuals;
- (2) emphasize political or religious goals;
- (3) include or promote advertising; or

(4) include expenditures for research, conferences, travel, films, videos, or publications, unless such items are an integral part of a larger project or undertaking that benefits the public and that the commissioners court supports.

§450.16. Contracts for Local Public Projects.

(a) A community development corporation or other entity seeking to provide a local public project must file an application with the commissioners court. The application shall be substantially in the form set out in Appendix A.

APPENDIX A
PUBLIC PROJECTS APPLICATION OUTLINE

1. **APPLICANT**

Name

Street Address

2. **PROJECT AND LOCATION**

Project and title, street address

Is the project included in a master plan approved by the county commissioners court?

3. **CONTACT INFORMATION**

Contact person, title, and phone number

4. **TOTAL PROJECT BUDGET**

Total project cost

5. **PURPOSE OF GRANT**

What specifically will the funds pay for? (Salaries, equipment, etc.)

What is the overall objective of the project?

What population will benefit by the project?

What are the expected outcomes of the project?

6. **STATEMENT OF NEED**

What is the problem being addressed?

How many people in the service area need this service?

Why is this project important to this community?

Was a needs assessment conducted? If so, what data was collected?

What other agencies are doing similar kinds of work?

Will there be other organizations involved in the project? What will be their role?

7. **PROJECT GOALS AND OBJECTIVES**

What are the goals, objectives, and timelines for the project?

What is the project methodology?

8. **EVALUATION MEASURES**

What specific measures will be used to evaluate the project?

9. **PERSONNEL**

What are the qualifications of the personnel and board of directors (if any) to carry out the program?

10. **APPLICANT FINANCIAL INFORMATION**

BUDGET

What is the total annual operating budget of the applicant?

PROJECT BUDGET

What is the total project budget?

APPLICANT SUPPORT

What money has been committed and from where?

PROJECT SUPPORT

What money has been committed and from where?

PENDING APPLICANT

PROPOSALS

Where else are proposals pending?

PENDING PROJECT

PROPOSALS

Where else are proposals pending?

BUDGET NARRATIVE

Rationale for the amount being recommended.

What is the unit cost, if applicable for services, and how does that compare to other, similar services?

COMMUNITY SUPPORT

1. Provide any letters from unrelated persons or organizations in the community.
2. Provide any letters of support from other regional or state organizations.

STATEMENT OF APPROVAL

The undersigned affirms that the responsible governing body approved this application on _____ (date) and is aware of, and concurs with, the information contained in the application. Further, if the proposed contract is executed, the undersigned agrees to use the funds only for the purpose granted and to provide any reports or information that may be requested by the County of Hudspeth or the Texas Low-Level Radioactive Waste Disposal Authority.

Signature: _____
Title: _____
Organization: _____
Date: _____

(b) If the commissioners court finds that the local public project is included in an approved plan under §450.14 and the application is approved by the commissioners court, the commissioners court shall enter into a contract with the applicant to provide the local public project.

§450.17. Transfer of Funds.

(a) The board shall quarterly transfer money in the low-level waste fund to the commissioners court for funding of local public projects approved in §450.14.

(b) The commissioners court shall maintain an interest-bearing account separate from all other county accounts into which the money will be transferred.

(c) Funds may be drawn from the account as needed to fund the approved local public projects. If the commissioners court contracts with other entities or public non-profit corporations to provide local public projects, the commissioners court is still accountable to the board for the use of the funds, and only those projects included in the plan may be undertaken by the entities or public non-profit corporations.

§450.18. Audit.

(a) At least once a year, the commissioners court shall provide to the board an independent financial audit by a certified public accountant acceptable to the board, of the funds expended for local public projects.

(b) The commissioners court may expend funds from the interest-bearing account established under §450.17(b) to pay for the audit.

§450.19. *Withholding of Funds.* If the board determines, as a result of information provided by an audit or some other reliable source, that funds have not been applied to a local public project; that funds have not been spent according to the approved plan; or that funds have been negligently or fraudulently disbursed, the board may withhold further funding and require the repayment of funds already spent, or take other appropriate action.

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

Issued in Austin, Texas, on September 29, 1993.

TRD-9329613

Lee H. Mathews
Deputy General Manager
and Legal Counsel
Texas Low-Level
Radioactive Waste
Disposal Authority

Proposed date of adoption: November 11, 1993

For further information, please call: (512) 451-5292

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.285

The Comptroller of Public Accounts proposes an amendment to §3.285, concerning resale certificate; sales for resale. The Tax Code, §151.707, was amended effective September 1, 1993, setting out specific penalties for intentionally or knowingly issuing invalid resale certificates. The amendment states those penalties.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. 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 proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.285. Resale Certificate; Sales for Resale.

(a) A sale for resale is not taxable. A sale for resale is a sale of a taxable item to any purchaser who is purchasing the item for the sole purpose of reselling, leasing, or renting it within the geographical limits of the United States of America, its territories and possessions, in the normal course of business either in the form or condition in which it is purchased, or as an attachment to, or integral part of, other taxable items.

(b) Acceptance of resale certificate.

(1) All gross receipts of a seller are subject to sales or use tax unless a properly completed resale or exemption certificate is accepted by the seller. A properly

completed resale certificate contains the information required by subsection (g) of this section. See also §3.287 of this title (relating to Exemption Certificates).

(2) A sale is exempt if the resale certificate is accepted in good faith and the seller lacks actual knowledge that the sale is not a sale for resale. It is the seller's responsibility to take notice of the type business generally engaged in by the purchaser as shown on the resale certificate.

(3) A resale certificate may be signed by a purchaser at the time of purchase if the purchaser intends to resell, lease, or rent the taxable item or transfer it as an integral part of a taxable service in the regular course of business.

(4) The seller should obtain a properly executed resale certificate at the time the taxable transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period will not be accepted and the deduction will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(c) Blanket resale certificate. A blanket resale certificate describing the general nature of the taxable items purchased for resale may be issued to a seller by a purchaser who purchases only items for resale. The seller may rely on the blanket certificate until it is revoked in writing.

(d) Retailers outside Texas.

(1) A seller in Texas may accept a resale certificate in lieu of tax from a bona fide retailer located outside Texas who purchases taxable items for resale as defined in subsection (a) of this section.

(2) The resale certificate must show the signature and address of the purchaser, the state to which the property is taken for resale, the sales tax permit number, if any, or the registration number assigned to the purchaser by the purchaser's home state. An invoice describing the taxable item purchased and showing the exact street address or office address from which the taxable item will be resold must be attached to the resale certificate. The resale certificate must also state the type business engaged in by the purchaser and the type items sold in the regular course of business. A resale certificate may be accepted from the *bona fide* out-of-state retailer even if the Texas retailer ships or delivers the taxable item directly to a recipient located inside Texas.

(3) The Texas retailer is not responsible for determining whether the out-of-state retailer is required to hold a Texas sales and use tax permit or to enter a Texas permit number on the resale certificate.

(e) Improper use of items purchased for resale.

(1) When an item is removed from a valid tax-free inventory for use in Texas, Texas sales tax is due. Texas sales tax is not due on items removed from a valid tax-free inventory for use outside the state. When an item purchased under a resale certificate is used for any purpose other than retention, demonstration, or display, the purchaser is liable for sales tax based on the fair market rental value of the item for the period of time used. The fair market rental value is the amount that a purchaser would pay on the open market to rent the item for use. If the item has no fair market rental value, the sales tax is due based upon the purchase price.

(2) At any time the person using a taxable item may stop paying tax on the

fair market rental value and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the original purchase price, credit will not be allowed for taxes previously paid on the fair market rental value.

(3) Sales tax is not due when a seller removes an item from a valid tax-free inventory and donates the item to an organization exempt under the Tax Code, §151.309 or §151.310(a)(1) and (2).

(f) Improper use of a resale certificate.

(1) A person may not issue a resale certificate at the time of purchase for a taxable item if the person knows the item is being purchased for a specific taxable use.

(2) Any person who intentionally or knowingly makes, presents, uses, or alters a resale certificate for the purpose of evading Texas sales or use tax [issues a resale certificate when purchasing a taxable item who knows, at the time of purchase, the item will be used for a purpose other than resale, lease or rental in the normal course of business] is guilty of a criminal offense.

(A) If the tax evaded by the invalid certificate is less than \$20, the offense is a Class C misdemeanor.

(B) If the tax evaded by the invalid certificate is \$20 or more but less than \$200, the offense is a Class B misdemeanor.

(C) If the tax evaded by the invalid certificate is \$200 or more but less than \$750, the offense is a Class A misdemeanor.

(D) If the tax evaded by the invalid certificate is \$750 or more but less than \$20,000, the offense is a felony of the third degree.

(E) If the tax evaded by the invalid certificate is \$20,000 or more, the offense is a felony of the second degree.

(g) Content of a resale certificate. A resale certificate must show:

(1) the name and address of the purchaser;

(2) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show the permanent permit number. If the purchaser holds a Texas sales and use tax permit, the number must consist of 11 digits that [which] begin with a 1, 2, or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale;

(3) a description of the taxable items generally sold, leased, or rented by the purchaser in the regular course of business and a description of the taxable items to be purchased tax free by use of the certificate. The item to be purchased may be generally described on the certificate or itemized in an order or invoice attached to the certificate;

(4) the signature of the purchaser and the date; and

(5) the name and address of the seller.

(h) Form of a resale certificate. A resale certificate must be substantially in the form set out as follows:

[TEXAS CERTIFICATE OF RESALE

[Purchaser: _____

[Street address: _____

[City, state, zip code: _____

[I hold Texas Limited Sales or Use Tax Permit No. _____ *

[The taxable item described below, or on the attached order or invoice, will be resold, rented, or leased by me within the geographical limits of the United States of America, its territories and possessions, in its present form or attached to other personal property to be sold. I understand that if I make any use of the item other than retention, demonstration or display while holding it for sale, lease, or rental, I must pay sales tax on the item at the time of use based upon either the purchase price or on the fair market rental value for the period of time used.

[I understand that it is a criminal offense to give to the seller a resale certificate for taxable items which I know, at the time of purchase, are purchased for use rather than for the purpose of resale, lease, or rental.

[Seller: _____

[Street address: _____

[City, state, zip code: _____

[Description of the property to be purchased:
[_____
[_____

[Provide a description of the type of business activity generally engaged in or the type of items normally sold by the purchaser:

[Sign
[here: _____ Date: _____ Phone: _____

[*Or, registration number from retailer's state or date permit was applied for.]

TEXAS RESALE CERTIFICATE

Name of purchaser, firm, or agency _____ Phone (Area code and number) _____

Address (Street & Number, P.O. Box or Route number) _____

City, state, ZIP code _____

Texas Sales or Use Tax Permit Number (or out-of-state retailer's registration number or date applied for Texas Permit) _____ (must contain 11 digits if from a Texas permit)

I, the purchaser named above, claim the right to make a nontaxable purchase for resale of the taxable items described below or on the attached order or invoice from:

Seller

Street Address _____

City, state, ZIP code _____

Description of the items to be purchased, or on the attached order or invoice:

Description of the type of business activity generally engaged in or type of items normally sold by the purchaser:

The taxable items described above, or on the attached order or invoice, will be resold, rented, or leased by me within the geographical limits of the United States of America, its territories and possessions, in their present form or attached to other taxable items to be sold.

I understand that if I make any use of the items other than retention, demonstration, or display while holding them for sale, lease, or rental, I must pay sales tax on the items at the time of use based upon either the purchase price or the fair market rental value for the period of time used.

I understand that it is a criminal offense to give a resale certificate to the seller for taxable items that I know, at the time of purchase, are purchased for use rather than for the purpose of resale, lease, or rental and, depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

Purchaser _____ Title _____ Date _____

**SIGN
HERE**

This certificate must be furnished to the supplier. Do NOT send the completed certificate to the Comptroller of Public Accounts.

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 October 4, 1993.

TRD-9329753

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: November 8, 1993

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

◆ ◆ ◆
• 34 TAC §3.287

The Comptroller of Public Accounts proposes an amendment to §3.287, concerning exemption certificates. The Tax Code, §151.707, was amended effective September 1, 1993, setting out specific penalties for intentionally or knowingly issuing invalid exemption certificates. The amendment states those penalties.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. 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 proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.287. *Exemption Certificates.*

(a) Definition. Exemption certificate—A document that [which], when properly executed, allows the tax-free purchase of an item that would otherwise be subject to tax. A purchaser claiming an exemption because the item purchased is for resale must issue a resale certificate to the seller. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). There is no provision in the sales and use tax act for an exemption number or a tax exempt number to be issued or used in connection with an exemption certificate.

(b) Who may issue an exemption certificate. An exemption certificate of the type described in this rule may only be issued by one of the following:

(1) an organization that has qualified for exemption under the Tax Code, §151.309 or [and] §151.310. See §3.322 of this title (relating to Exempt Organizations);

(2) a person purchasing an item that [which] is exempt under the Tax Code, Chapter 151, Subchapter H.

(c) Maquiladora exemption and direct payment permits.

(1) People who make purchases using direct pay permits should refer to §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(2) People who make purchases using maquiladora exemption permits should refer to §3.358 of this title (relating to Maquiladoras).

(d) Acceptance of exemption certificate.

(1) All gross receipts of a retailer are subject to sales or use tax unless a valid and properly completed exemption certificate is accepted by the seller.

(2) A sale is exempt if the exemption certificate is accepted in good faith at the time of the transaction and the seller lacks actual knowledge that the claimed exemption is invalid.

(3) A person who intentionally or knowingly makes, presents, uses, or alters an exemption certificate for the purpose of evading the Texas sales or use tax [issues an exemption certificate when purchasing a taxable item who knows at the time of purchase the item will be used in a manner other than that expressed in the certificate] is guilty of a criminal offense.

(A) If the tax evaded by the invalid certificate is less than \$20, the offense is a Class C misdemeanor.

(B) If the tax evaded by the invalid certificate is \$20 or more but less than \$200, the offense is a Class B misdemeanor.

(C) If the tax evaded by the invalid certificate is \$200 or more but less than \$750, the offense is a Class A misdemeanor.

(D) If the tax evaded by the invalid certificate is \$750 or more but less than \$20,000, the offense is a felony of the third degree.

(E) If the tax evaded by the invalid certificate is \$20,000 or more, the offense is a felony of the second degree.

(4) The seller should obtain the properly executed exemption certificate at the time the [taxable] transaction occurs. All certificates obtained on or after the date the comptroller's auditor actually begins work on the audit at the seller's place of business or on the seller's records after the entrance conference are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. Written notice shall be given by the comptroller upon the filing of a petition for redetermination or claim for refund. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification by the comptroller before any deductions will be allowed. Certificates delivered after the 60-day period will not be accepted and the deduction will not be granted.

(5) The exemption certificate will be valid if the seller received it in good faith from a purchaser and if the certificate states valid qualifications for an exemption. A retailer must be familiar with the exemptions that are available for the items the retailer sells.

(6) An exemption certificate is not acceptable when an exemption is claimed because tangible personal property is exported outside the United States. For proper documentation required for proof of export, see §3.323 of this title (relating to Imports and Exports) and §3.360 of this title (relating to Customs Brokers).

(e) Improper use of items purchased under an exemption certificate.

(1) When an item purchased under a valid exemption certificate is used in a taxable manner, whether the use is in Texas or outside the state, the purchaser is liable for payment of sales tax based on the fair market rental value of the item for the period of time used. The fair market rental value is the amount the purchaser would pay on the open market to rent the item for use. If the item has no fair market rental value, sales tax is due on the original purchase price. If the exemption certificate was invalid at the time of its issuance, the purchaser owes tax on the original purchase price.

(2) At any time the person using the item purchased under a valid exemption certificate may stop paying tax on the fair market rental value and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid on the fair market rental value.

(3) Sales tax is not due when an item purchased under a valid exemption certificate is donated to an organization exempt from tax under the Tax Code, §151.309 or §151.310(a)(1) or (2).

(4) Contractors using equipment purchased under a valid exemption certificate on both taxable and exempt projects must account for tax based upon the provisions in §3.291 of this title (relating to Contractors).

(f) Content of an exemption certificate. An exemption certificate must show:

(1) the name and address of the purchaser;

(2) a description of the item to be purchased;

(3) the reason the purchase is exempt from tax;

(4) the signature of the purchaser and the date; and

(5) the name and address of the seller.

(g) Purchases of taxable items by agents of the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC). The FDIC or [] RTC may purchase items tax free for use in operating a property or business to which it has [they have] title. An exemption certificate may be issued by [either] the FDIC or [] RTC or by persons acting as agents for the FDIC or [] RTC when purchasing items that are incorporated into or used on the property or business being managed. The certificate must state that the purchases

are being made by or for the FDIC or [] RTC. The FDIC or [] RTC or persons managing property or a business for these corporations may issue an exemption certificate when:

(1) the FDIC or [] RTC provides documentation to the person managing the property or business showing that title to the property or business being managed was transferred to the FDIC or [] RTC; and

(2) the FDIC or [] RTC has entered into a written agreement with the person managing the property or business that designates that person as its agent and authorizes that person to make purchases on its behalf. The agreement must be in the person's files for review by the comptroller. It is not necessary to provide a copy of the agreement to suppliers.

(h) Form of an exemption certificate. An exemption certificate must be in substantially the form set out as follows.

TEXAS SALES AND USE TAX EXEMPTION CERTIFICATE

Name of purchaser, firm, or agency

Address (Street & number, P.O. Box or Route number) Phone (Area Code and number)

City, State, ZIP code

I, the purchaser named above, claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice form:

Seller:

Street address: City, State, ZIP code:

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of sales or use taxes which may become due for failure to comply with the provisions of the Tax Code: Limited Sales, Excise, and Use Tax Act; Municipal Sales and Use Tax Act; Sales and Use Taxes for Special Purpose Taxing Authorities; County Sales and Use Tax Act; County Health Services Sales and Use Tax; The Texas Health and Safety Code; Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate and, depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

Purchaser Title Date

**SIGN
HERE**

Note: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle. THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID. Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do NOT send the completed certificate to the Comptroller of Public Accounts.

[TEXAS CERTIFICATE OF EXEMPTION

[Purchaser's name

[Street Address

[City, state, zip code

[I claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice:

[Description of items (or an attached order or invoice) to be purchased:

[I claim this exemption for the following reason:

[

[I understand that I will be liable for payment of sales tax which may become due for failure to comply with the provisions of the Tax Code: Limited Sales, Excise, and Use Tax Act, Municipal Sales and Use Tax Act, Sales and Use Taxes for Special Purpose Taxing Authorities, County Sales and Use Tax Act, County Health Services Sales and Use Tax and the Texas Health and Safety Code: Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less. Liability for the tax will be determined by the price paid for the taxable items purchased or the fair market rental value for the period of time used.

[I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items which I know, at the time of purchase, will be used in a manner other than that expressed in this certificate.

[Seller: _____

[Street address: _____

[City, state, zip code: _____

[Purchaser's

[signature: _____ Date: _____ Phone: _____

[Title: _____

[This certificate does not require a number to be valid. Sales and use tax exemption numbers or tax exempt numbers do not exist.

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 October 4, 1993.

TRD-9329756

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: November 8, 1993

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

◆ ◆ ◆
• 34 TAC §3.296

The Comptroller of Public Accounts proposes an amendment to §3.296, concerning agriculture, animal life, feed, seed, plants, and fertilizer. The amendment provides an exemption for tangible personal property installed as a part of an underground irrigation system on farms and ranches. The amendment is the result of a change in the Tax Code, Chapter 151, that is effective September 1, 1993.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. 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 individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.296. Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer. (Texas Tax Code §151.316 and §151.342).

(a) Sales tax is not due on the receipts from sales of, and the storage, use or consumption of, the following:

(1) Horses, mules, work animals, and any form of animal life of a [any] kind[,] the products of which ordinarily constitute food for human consumption.

(A) Sales tax is not due on the sale [sales], lease, or rental of horses

and mules except when sold, leased, or rented as a part of an amusement service.

(B) The term "work animals" shall include any animal exclusively used in the following:

(i) The production of food for human consumption or other agricultural products held for sale in the regular course of business. Examples: plow animals or sheep dogs.

(ii) The aiding of handicapped individuals or the performance of protective services, providing that the animal has been professionally trained for that specific purpose.

(C) "Work animals" shall not include animals raised, trained, or held as pets or for sport or show.

(D) Exemption certificates are not required on sale of horses, mules, or any form of animal life of a kind, the products of which ordinarily constitute food for human consumption. Sales tax is due on the sale of all other animals unless the purchaser provides a valid and properly completed resale or exemption certificate.

(2) Hay, corn, oats, and any other type of feed normally consumed by farm and ranch animals, animals that [which] are held for sale in the regular course of business, and wildlife.

(A) Included in this section is feed for animals covered by paragraph (1) of this subsection, feed for animals held for breeding purposes whose offspring are held for sale in the regular course of business, and wildlife. Feed purchased for an animal that might normally be kept as a pet is taxable. Pets [would] normally include, but are not [be] limited to, dogs, cats, rabbits, hamsters, and tropical fish.

(B) All persons selling the type of feed that is normally consumed by farm and ranch animals or wildlife may sell the feed tax free without an exemption certificate. Persons selling food for an animal that might normally be kept as a pet should collect sales tax or accept a valid and properly completed resale or exemption certificate from the purchaser.

(3) Seeds and annual plants, the products of which [either] ordinarily constitute food for human consumption, are used to produce feed for animals exempted by this rule, or are to be sold in the regular course of business. An exemption certificate is not required when purchasing these items.

(4) Fertilizers, fungicides, insecticides, herbicides, defoliants, and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business. However, when these particular items are used in commercial storage facilities or other storage facilities that [which] are not operated exclusively by the owner or are not located on the farm or ranch, the exemption is lost[,] and the tax must be remitted on the sales price of the [such] items. Fertilizer is taxable if sold for use on lawns, home gardens, or for any uses other than those listed in this paragraph. See subsection (d) of this section regarding exemption certificates.

(5) Machinery or equipment used or employed on farms or ranches exclusively in:[.]

(A) [in] the production of food for human consumption, production of grass, production of feed for any form of animal life, or other agricultural products to be sold in the regular course of business;[,] and

(B) the building or maintaining of roads and water facilities.

(b) Sales tax is not due on machinery and equipment exclusively used in the processing, packing, or marketing of agricultural products by the original producer at a location operated by the original producer exclusively for processing, packing, or marketing the original producer's [his] own products.

(1) Machinery and equipment exclusively used in the processing, packing, or marketing[,] of agricultural products by an agricultural cooperative organized under the Agriculture Code, Chapter 52 [Texas Civil Statutes, Articles 5737-5764], are not exempt unless [it is determined by] the comptroller determines that:

(A) the cooperative itself is the original producer of all the agricultural products being processed, packed, or marketed; and

(B) the processing, packing, or marketing is being accomplished at a location operated by the cooperative.

(2) The three tests (all of which must be answered in the affirmative) for determining if a person is the original producer are:

(A) is the person the grower of the crops;[,]

(B) does the person exercise predominant operational control over the raising of the crops;[,] and

(C) does the person bear a risk of loss of investment in the crop?

(c) Persons purchasing trees, shrubs, and ornamental plants for resale are presumed to be marketing these products rather than fostering their growth. The presumption may be overcome by showing that actions were taken that [which] did more than maintain the products prior to sale. An example is [would be] replanting a shrub in a bigger container to encourage growth. Machinery, equipment, and other tangible personal property purchased to maintain the plants prior to sale are taxable.

(d) All persons engaged in the business of selling items that [which] are exempt [exempted in this section] from the sales tax must obtain an exemption certificate from their customers as provided in the Tax Code, §151.155 and §3.287 of this title (relating to Exemption Certificates). The certificate may be a blanket certificate covering all purchases only when the items being sold are of a type or quantity that [which] would not generally be used except on a farm or ranch. An example is [would be] farm machinery or fertilizer purchased in bulk. When a seller sells taxable items and items that [which] may qualify for exemption under this section, the seller may either obtain an exemption certificate for each item that [which] qualifies for exemption or obtain a certificate at the time the customer makes an exempt purchase initially and keep that certificate on file. When subsequent exempt purchases are made, the invoice must be stamped with the words, "Exempt agricultural purposes" and the customer must sign the invoice.

(e) All medications, tonics, restoratives, or other therapeutic preparations for farm and ranch animals that [which] are used exclusively on a farm or a ranch are exempt from sales and use tax. (for example, drenches and vaccines)]. See subsection (d) of this section regarding exemption certificates.

(f) A farm or ranch is defined as one or more tracts of land used, either wholly or in part, in the production of crops, livestock, and/or other agricultural products held for sale in the regular course of business. This includes feed lots, dairy farms, commercial orchards, commercial nurseries, and similar commercial agricultural operations. Farm or ranch does not include home gardens or timber operations.

(g) The terms machinery or equipment [shall] include:

(1) expendable supplies, such as hand tools, baling wire, and binders twine;

(2) lubricants for farm machinery and for motor vehicles not licensed for highway use;

(3) nuts, bolts, washers, and other hardware. It [shall] also includes [include] materials used on or in buildings, structures, or structural components that [which] are classified as machinery or equipment;

(4) repair or replacement parts used exclusively on farm or ranch machinery or equipment. This includes [shall include] tractor tires, tires used on motor vehicles not licensed for highway use, and tires specifically designated by the manufacturer for farm use or off-highway use only;

(5) machinery and equipment used exclusively to maintain equipment that [which] qualifies for exemption under this section;

(6) those items specifically designed to be assembled into a machine, such as parts of a pumping system or portable irrigation systems;

(7) tangible personal property sold for use as a component of an underground irrigation system;

(8)[(7)] fenceposts, cattleguards, gates, and chutes. However, fenceposts, gates, and cattleguards used to enclose private driveways, home lawns, gardens, pools, etc., do not qualify for exemption from tax. These items purchased by persons operating commercial nurseries and greenhouses and similar commercial operations for the purpose of preventing trespassing by the public do not qualify for exemption from tax; and

(9)[(8)] the following items and the materials used to build, construct, or fabricate these items (these items are classified as equipment and are therefore exempt), provided they meet the qualifications set out in this section and have not been previously excluded:

(A) fences, pens, gates, cattleguards, and chutes used in connection with raising livestock or production of agricultural products;

(B) storage facilities specifically designed for and that [which] can [only] be used only to store bulk fungible commodities regardless of whether the facilities [they] are of a portable or fixed nature. Typical facilities on farms or ranches include petroleum products storage tanks, grain storage bins, refrigerated storage structures for unprocessed fruit, silos, and vehicle-mounted fertilizer spreaders or feed mills (not licensed for highway use). General purpose facilities that [which] are used to store bulk fungible commodities,

farm produce or equipment do not qualify for exemption from tax. Only those facilities that cannot [which can not] be used for any purpose other than the storage of fungible goods qualify as farm equipment;

(C) a building or structure that is [buildings and structures which are] essentially an item of equipment or machinery necessary for agricultural production if it [the structure] is specifically designed for such use[,] and [the structure] cannot be economically used for any other purpose. For example, automated laying houses, farrowing houses, and commercial greenhouses.

(h) Sales tax is due on the sale of computer hardware [when sold] for use on farms and ranches unless specifically designed as a part of production equipment, such as a computer-operated feed mixing device. Computer software that [which] is designed specifically to aid in the production, processing, packing, or marketing of agricultural products of the original producer qualifies for [a sales tax] exemption. Computer software used for, but not limited to, household budgeting, payrolls, bookkeeping, educational, or recreational purposes is taxable

(i) Buildings and structural components and/or the materials used to build, construct, or fabricate the following facilities are not exempt from the limited sales and use tax.

(1) Buildings include any structures or edifices [structure or edifice] enclosing a space within their [its] walls, and usually covered by a roof, the purpose of which may be to provide storage, shelter, or housing, or to provide working, office, or sales space (for example, houses, offices, barns, storage facilities, warehouses, garages, and stores).

(2) Structural components include those parts of a building or machinery in, on, or adjacent to a building, relating to the operation or maintenance of the building (for example, air conditioning or heating systems). However, if the sole justification for installation is to meet humidity or temperature requirements essential for the operation of other machinery or the processing of plants, animals, or foodstuffs, the structural component is exempt.

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 October 4, 1993.

TRD-9329755

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

Earliest possible date of adoption: November 8, 1993

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

◆ ◆ ◆
• 34 TAC §3.297

The Comptroller of Public Accounts proposes an amendment to §3.297, concerning carriers. A change to the Tax Code, §151.328, provides a new procedure for claiming a sales tax exemption when purchasing an aircraft for registration and use outside Texas. The amendment sets out the new procedure and exemption certificate for claiming the exemption. The Tax Code changes are effective October 1, 1993. The rule adopts the exemption certificate by reference.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. 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 proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.297. Carriers.

(a) Carriers generally.

(1) (No change.)

(3) Use tax is not due on repair or replacement parts acquired outside this state and actually affixed in this state to a self-propelled vehicle that [which] is used as a licensed and certificated common carrier. Trailers, barges, and semitrailers are not considered to be self-propelled vehicles.

(4) (No change.)

(5) Sales tax is not due on the sale of taxable items to a common carrier if such items are [property is] shipped to a point outside this state using the purchasing carrier's facilities under a bill of lading, and if such items are [property is] to be used by the purchasing carrier in the conduct of its business outside the State of Texas.

(6) Sales tax is due on licensed and certificated carrier devices purchased under valid resale or exemption certificates that [which] are put to a use other than the one specified in the certificate. The sales

tax is based on the fair market rental value of the licensed and certificated carrier device for the period of time used. At any time the person using the carrier device in a taxable manner may stop paying tax on the fair market rental value and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid on the fair market rental value. See §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this title (relating to Exemption Certificates).

(b) Vessels.

(1) Sales or use tax is not due on the sale by the builder of a vessel [of vessels] in excess of eight tons displacement that is[,] used exclusively for commercial purposes [if the sale of such vessel is made by the builder of the vessel]. For the purpose of this section, eight tons displacement means the weight of fresh water displaced by a vessel before being loaded with fuel, supplies, or cargo.

(2) Sales or use tax is not due on materials, equipment, and machinery that [which] become component parts of vessels qualified under paragraph (1) of this subsection whether purchased by the builder or by a subsequent owner or operator. A component part is:

(A) A marine cargo container that [which] is fully or partially enclosed to constitute a compartment of a permanent character intended for containing goods. It is strong enough to be suitable for repeated use, specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate re-loading. It is designed for ready handling, particularly when being transferred from one mode of transport to another. The term "marine cargo container" includes the accessories and equipment of the container provided that such accessories and equipment are carried with the container. The term "marine cargo container" does not include chassis, vehicles, accessories or spare parts of vehicles.

(B) All tangible personal property that [which] is actually attached to and becomes a part of a vessel [vessels] qualified under paragraph (1) of this subsection. The term does not include furnishings of any kind that [which] are not attached to the vessel, nor does it include consumable supplies. For example, it does not include bedding, linen, kitchenware [kitchen ware], tables, chairs, ice for cooling, refrigerants for cooling systems, fuels, or lubricants.

(3) Use tax is not due on vessels acquired outside this state and moved into this state for use in the regular course of

business of transporting persons or property by a person qualified under subsection (a)(1) of this section.

(4) Materials and supplies, including items commonly known as ships' stores and sea stores, sold to owners or operators of ships or vessels operating exclusively in foreign or [and] interstate commerce for use and consumption in the operation and maintenance of such ships or vessels, are exempt from the sales and use tax.

(A) "Operating exclusively in foreign or interstate coastwise commerce" is defined, for the purposes of this section, as transporting goods or persons between a point in the State of Texas and a point in another state or in a foreign country. It does not include trips to and from offshore areas[,] or fishing areas on the high seas, or trips between two points in the State of Texas.

(B) Operation of the vessel in a manner other than in foreign or interstate commerce will result in a loss of the exemption for ships' stores and sea stores for the quarterly period in which the nonexempt operation occurs.

(C) Any owner or operator of such a vessel [vessels] shall, when giving an exemption certificate, set forth the title or position of the person issuing the certificate[,] and the name of the vessel on which the [such] items are to be loaded.

(D) Sales tax is due on sales made to individual seamen operating these vessels.

(5) Closely associated service companies provide servicing operations such as stevedoring, loading, and unloading vessels. Tax is due on taxable items sold, leased, or rented to the service company without regard to the fact that such property may be used on vessels involved in interstate or foreign commerce.

(c) Aircraft other than aircraft used by licensed and certificated carriers.

(1) The term "aircraft" does not include rockets or missiles, but does include:

(A) a fixed-wing, heavier-than-air craft that [which] is driven by propeller or jet and is supported by the dynamic reaction of the air against its wings;

(B) a helicopter;

(C) an airplane flight simulator approved by the Federal Aviation Ad-

ministration for use as a Phase II or higher flight simulator under Appendix H, 14 Code of Federal Regulations, Part 121.

(2) Sales or use tax is not due on aircraft sold to a [nonresident or] foreign government.

(3)-(5) (No change.)

(6) Sales or use tax is not due on aircraft purchased and used for the exclusive purpose of pilot training in a licensed course of instruction. Licensed course of instruction means pilot training or instruction conducted by a flight training school that [which] has been certified or granted provisional certification under Federal Aviation Administration Regulations, 14 Code of Federal Regulations, Part 141 (1974). Any nonexempt use of the aircraft will cause the purchaser to become liable for the sales tax on either the fair market rental value of the aircraft for the period of nonexempt use or upon the original purchase price. See §3.287 of this title (relating to Exemption Certificates).

(7) Texas sales or use tax is not due on aircraft sold to a person for use and registration in another state or nation before any use in Texas. Flight training in the aircraft in Texas and flying the aircraft out of state does not constitute a use of the aircraft in Texas.

(A) To claim the exemption, an exemption certificate, substantially similar in form and content to the certificate shown on the last page of this section, must be signed by both the seller and the purchaser at the time of purchase. The seller may accept a certificate if the seller lacks actual knowledge that the claimed exemption is invalid. The seller must provide a copy of the completed certificate to the Comptroller of Public Accounts within 30 days of the sale.

(B) By signing the certificate, the purchaser authorizes the comptroller to provide a copy of the certificate to the state or nation of intended use and registration.

(C) Issuing an invalid certificate is a misdemeanor punishable by a fine not to exceed \$500 in addition to the assessment of tax and, when applicable, penalty and interest on the purchase price of the aircraft.

(d) Licensed and certificated carriers. Sales or use tax is not due on aircraft used by persons defined in subsection (a)(1) of this section in the regular course of business of transporting persons or property for hire.

(1) The following items or services used in the repair, remodeling, or

maintenance of aircraft or aircraft engines or component parts by or for a person qualified under subsection (a)(1) of this section are exempt if purchased by the aircraft owner or operator, by the aircraft manufacturer, or by a repair facility licensed and certified by the appropriate regulatory agency.

(A) Machinery, tools, and equipment used directly and exclusively in the repair, remodeling, or maintenance. Included in the exemption [provided by this paragraph] is equipment used to sustain or support safe and continuous operations or to keep the aircraft in good working order by preventing its [the] decline, failure, lapse, or deterioration, such as battery chargers or diagnostic equipment. Consumable supplies, such as cleaning solvents, used in providing the repair, remodeling, or maintenance, but that are not part of or used in the aircraft, are not included in the exemption [provided by this paragraph].

(B) Repair, remodeling, and maintenance services.

(2) Tax is not due on tangible personal property that is permanently affixed or attached as a component part of an aircraft used as a licensed and certificated carrier device of persons or property, even though the property may be detached from the aircraft for servicing, maintenance, or other purposes. Exempt component parts include [items such as] air cargo containers that are secured or attached to the aircraft while in flight, radar equipment or other electronic devices used for navigational or communications purposes, food carts, smoke detectors, fire extinguishers, and seats.

(3) Tax is not due on hydraulic fluids, gases, and lubricants used or consumed on or in the aircraft. Pillows, blankets, trays, ice for drinks, kitchenware, or toilet articles are not exempt from tax.

(4) Machinery, tools, and equipment that support the overall carrier operation such as baggage loading or handling equipment, garbage and other waste disposal equipment, or reservation making or booking machinery and equipment, do not qualify for exemption.

(e) Taxable uses of tangible personal property purchased tax free. Persons making a taxable use of tangible personal property purchased tax free should refer to §3.285 of this title (relating to Resale Certificate; Sales for Resale) and §3.287 of this Exemption Certificates).

(f) Rolling stock.

(1) Sales or use tax is not due on the sale or use of locomotives and rolling stock.

(2) Sales or use tax is not due on the fuel or supplies essential to the operation of locomotives and trains if required by federal or state regulation.

(g) Motor carriers. The sale and use of motor carriers are [is] taxed under [by] the Tax Code, Chapters 152 and 157, and are [will] not be subject to the limited sales and use taxes.

(h) Certificate. The comptroller adopts by reference the Texas Aircraft Exemption Certificate Out-of-State Registration and Use. Copies of the certificate are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, Account Maintenance, 111 East 17th Street, Austin, Texas 78774-0100. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)

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 October 4, 1993.

TRD-9329757

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: November 8, 1993

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

Subchapter P. Municipal Sales and Use Tax

• 34 TAC §3.379

The Comptroller of Public Accounts proposes an amendment to §3.379, concerning contractors. The amendment incorporates changes made to the Tax Code, Chapter 151, regarding items that may be purchased tax-free and items upon which tax is due when improving realty for exempt organizations.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. 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 individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.379. *Contractors. (Texas Tax Code §§151.056, 151.311, and 321.208).*

(a) Definitions. For the definition of lump-sum and separated contracts and the general responsibilities of contractors, see §3.291 of this title (relating to Contractors).

(b) Separated contracts.

(1) Contractors performing separated contracts are retailers of the materials incorporated in the customer's real property.

(2) Contractors performing separated contracts are required to hold permits and to collect city sales tax from customers on the sales price of the materials. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(3) The jobsite is the contractor's place of business for the purpose of determining the imposition of [where] city tax [is due].

(4) If the jobsite is within a taxing city, city tax is due for that city on the separate charges for materials. If the jobsite is not in a taxing city, the city tax is not due.

(5) Contractors are not selling the equipment and consumable supplies they use but do not incorporate into the customer's property. The contractor may not issue or accept resale certificates but must pay the city tax, if any, on the equipment and consumable supplies. This city tax may not be passed on directly to the customer.

(c) Lump-sum contracts.

(1) Contractors performing lump-sum contracts are consumers of all materials, supplies, and equipment used or incorporated into the customer's property.

(2) Contractors purchasing taxable items for use in lump-sum contracts must pay city sales tax to Texas retailers as set out in §3.374 of this title (relating to Collection and Allocation [Imposition] of the City Sales Tax[; Collection by Retailer; Bracket System Formula; Determining City Tax]). The jobsite of the lump-sum contractor does not determine the imposition of city sales tax.

(3) If taxable items are brought into Texas by a contractor for use in the performance of a lump-sum contract in a

taxing city, the city use tax is due. See §3.375 of this title (relating to City [Administration of] Use Tax[; Collection by Retailer]).

(4) If taxable items are purchased from a retailer within the state but outside a taxing city, and the items are shipped into or brought by the contractor directly into a taxing city, the city use tax is due. See §3.375 of this title (relating to City [Administration of] Use Tax[; Collection by Retailer]).

(5) The basis of the city use tax is the purchase price. The city use tax is due in the reporting period in which the item was first stored, used, or otherwise consumed in a taxing city.

(d) Exempt organizations. Contractors improving realty for organizations exempted under the Tax Code, §151.309 or §151.310 [exempt customers] may purchase certain taxable items exempt from local sales and use taxes. Those items exempt from local sales and use taxes include:

(1) tangible personal property to be incorporated into the customer's real property [all materials, supplies, equipment, and other tangible personal property incorporated into the property being improved for an organization exempted under the Texas Tax Code §151.309 and §151.310. The items that qualify for exemption are those that would be exempt from state tax under §3.291 of this title (relating to Contractors)];

(2) consumable items that are necessary and essential to the contract and completely consumed at the jobsite [all materials, supplies, equipment, and other tangible personal property, purchased, rented or leased by a contractor for use in the performance of a contract with a customer exempted under the Tax Code §151.309(4) or (5) and §151.310]; and

(3) taxable services performed at the jobsite and that are either expressly required by the contract to be performed or purchased by the contractor or are integral to the performance of the contract [if equipment purchased for use in improving realty for an exempt organization is used in a nonexempt manner within a taxing city, city sales tax is due in accordance with the depreciation schedule in §3.291 of this title (relating to Contractors)].

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 October 4, 1993.

TRD-9329752

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: November 8, 1993

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

Subchapter R. Transit Sales and Use Tax

• 34 TAC §3.429

The Comptroller of Public Accounts proposes an amendment to §3.429, concerning contractors. The amendment incorporates changes made to the Tax Code, Chapter 151, regarding items that may be purchased tax-free and items upon which tax is due when improving realty for exempt organizations.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. 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 individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.429. *Contractors. (Texas Civil Statutes, Article 1118x, §11B(B) (e) and Article 1066c, §§4A and 6B(1); Texas Tax Code §151.056).*

(a) Definitions. For the definition of lump-sum and separated contracts and the general responsibilities of contractors, see §3.291 of this title (relating to Contractors).

(b) Separated contracts.

(1) Contractors performing separated contracts are retailers of the materials incorporated in the customer's real property.

(2) Contractors performing separated contracts are required to hold permits and to collect transit [MTA] sales tax from customers on the sales price of the materials. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities.)

(3) The jobsite is the contractor's place of business for the purpose of determining the imposition of transit [where MTA] tax [is due].

(4) If the jobsite is within an authority, the transit [MTA] tax is due for

that authority on the separate charge for materials. If the jobsite is not in an authority, transit [MTA] tax is not due.

(5) Contractors are not selling the equipment and consumable supplies they use but do not incorporate into the customer's property. The contractor may not issue or accept resale certificates but must pay the transit [MTA] tax, if any, on the equipment and consumable supplies. This transit [MTA] tax may not be passed on directly to the customer.

(c) Lump-sum contracts.

(1) Contractors performing lump-sum contracts are consumers of all materials, supplies, and equipment used or incorporated into the customer's property.

(2) Contractors purchasing taxable items for use in lump-sum contracts must pay transit [MTA] sales tax to Texas retailers as set out in §3.424 of this title (relating to Collection and Allocation [Imposition] of Transit Sales Tax). The jobsite of the lump-sum contractor does not determine the imposition of transit [MTA] sales tax.

(3) If taxable items are brought into Texas by a contractor for use in the performance of a lump-sum contract in an authority, transit [MTA] use tax is due. See §3.425 of this title (relating to Transit [Administration of] Use Tax; Imposition and Collection)).

(4) If taxable items are purchased from a retailer within the state but outside an authority and the taxable items are shipped into or brought by the contractor directly into the authority, transit [MTA] use tax is due. See §3.425 of this title (relating to Transit [Administration of] Use Tax; Imposition and Collection)).

(5) The basis of the transit [MTA] use tax is the purchase price. The transit [MTA] use tax is due in the reporting period in which the item was first stored, used, or otherwise consumed in an authority.

(d) Exempt organizations. Contractors improving realty for organizations exempted under the Tax Code, §151.309 or §151.310 [exempt customers] may purchase certain taxable items exempt from transit [MTA] sales and use taxes. Those items exempt from transit [MTA] sales and use taxes include:

(1) tangible personal property to be incorporated into the customer's real property [all materials, supplies, equipment, and other tangible personal property incorporated into the property being improved for an organization exempted under Texas Tax Code, §151.309 and §151.310. The items that qualify for exemption are those that would be exempt from

state tax under §3.291 of this title (relating to Contractors)];

(2) consumable items that are necessary and essential to the contract and completely consumed at the jobsite [all materials, supplies, equipment, and other tangible personal property, purchased, rented or leased by a contractor for use in the performance of a contract with a customer exempted under Texas Tax Code, §151.309(4) or (5) and §151.310]; and

(3) taxable services that are performed at the jobsite and that are either expressly required by the contract to be performed or purchased by the contractor or are integral to the performance of the contract [if equipment purchased for use in improving realty for an exempt organization is used in a nonexempt manner within an authority, MTA sales tax is due in accordance with the depreciation schedule in §3.291 of this title (relating to Contractors)].

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 October 4, 1993.

TRD-9329754

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: November 8, 1993

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

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

**Part I. Texas Department
of Public Safety**

Chapter 23. Vehicle Inspection

**Commercial Motor Vehicle
Compulsory Inspection Pro-
gram**

• 37 TAC §23.101

The Texas Department of Public Safety proposes new §23.101, concerning Commercial Motor Vehicle Compulsory Inspection Program. The new section provides that commercial motor vehicles registered in this state shall be required to pass an annual inspection of all safety equipment required by the federal safety regulations.

Melvin C. Peebles, assistant chief of fiscal affairs has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be an estimated increase in revenue of \$2,812,500 in 1994;

\$2,812,500 in 1995; \$2,812,500 in 1996; \$2,812,500 in 1997; and \$2,812,500 in 1998. There will be no effect on local government for the first five-year period the section is in effect.

The new section is promulgated under the authority of the Texas Tax Code, Title 2; therefore no analysis of the effect on small businesses is required. The cost for obtaining a commercial motor vehicle safety inspection certificate will be the same for small or large businesses.

Lester Mills, captain, Traffic Law Enforcement, has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to ensure that all commercial motor vehicles meet the minimum equipment requirements of the state and federal motor carrier safety regulations. The anticipated economic cost to persons who are required to comply with the section as proposed will be a \$50 fee for a Commercial Motor Vehicle Safety Inspection Certificate.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new section is proposed under Texas Civil Statutes, Article 6701d, §140A, which provide the Public Safety Commission with the authority to establish an inspection program for commercial motor vehicles that meets the requirements of the federal safety regulations.

§23.101. Commercial Motor Vehicle Compulsory Inspection Program.

(a) All commercial motor vehicles registered in this state shall be required to pass an annual inspection of all safety equipment required by the Federal Motor Carrier Safety Regulations on or before the expiration of the current state inspection certificate and not later than December 31, 1994.

(b) All commercial motor vehicles required to be inspected under the Federal Motor Carrier Safety Regulations are also subject to the regular state inspection requirements as provided in Texas Civil Statutes, Article 6701d, §140.

(c) A fee of \$50 will be charged for each commercial motor vehicle safety inspection. A unique inspection certificate will be issued by the department to designate that the vehicle has met the Federal Motor Carrier Safety Regulations and state inspection requirements.

(d) The commercial motor vehicle inspection certificate will expire on the last day of the month and year indicated.

(e) Except for any appropriate grace period, a person may not operate a commercial motor vehicle registered in this state unless it is equipped as required by the Federal Motor Carrier Safety Regulations

and displays a valid commercial motor vehicle inspection certificate.

(f) For purposes of the Commercial Motor Vehicle Compulsory Inspection Program, the term "commercial motor vehicle" means any self-propelled or towed vehicle, except a farm vehicle with a gross weight, registered weight, or gross weight rating of less than 48,000 pounds, used on a public highway to transport passengers or property when:

(1) the vehicle or combination of vehicles has a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds;

(2) the vehicle is designed to transport more than 15 passengers, including the driver; and

(3) the vehicle is used in the transportation of hazardous materials in a quantity requiring placarding as required under the federal Hazardous Materials Transportation Act (49 United States Code, §§1901-1813).

(g) Exceptions to the commercial motor vehicle safety inspection program are:

(1) all school bus operations used to transport only children and or school personnel from home to school and school to home, except that contract school buses used for any purpose other than transporting children to and from school only are not exempt;

(2) transportation performed by the federal government, state, or any political subdivision of a state or an agency established under a compact between states that has been approved by the Congress of the United States;

(3) the occasional transportation of personal property by individuals not for compensation or in the furtherance of a commercial enterprise;

(4) the transportation of human corpses or sick or injured persons;

(5) the operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) the private transportation of passengers; and

(7) farm vehicles with a gross weight, registered weight, or gross weight rating less than 48,000 pounds (except interstate operation of more than 10,000 pounds).

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 17, 1993.

TRD-9329687

James R. Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption: November 8, 1993

For further information, please call: (512) 465-2000

Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Rules

Subchapter C. Transfer Facility Admissions

• 37 TAC §§152.21, 152.22, 152.31

The Department of Criminal Justice proposes new §152.21 and §152.22, concerning the admission policy proposed by the Texas Board of Criminal Justice to govern admission of eligible inmates from county jails into Texas Department of Criminal Justice transfer facilities; and §152.31, concerning the transfer policy adopted by the Texas Board of Criminal Justice to govern transfer of eligible inmates from transfer facilities to other facilities of the institutional division.

David McNutt, assistant director of Budget and Management 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. McNutt 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 the orderly admission of eligible inmates from county jails into Texas Department of Criminal Justice transfer facilities and the orderly transfer of eligible inmates from transfer facilities to other facilities of the institutional division. 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 Cathy McVey, Director of Programs, Texas Department of Criminal Justice, P.O. Box 99, Huntsville, Texas 77342-0099.

The new sections are proposed under the Texas Government Code, §499.153, which provides Texas Board of Criminal Justice with the authority to develop, adopt, and enforce an admissions policy to accept eligible inmates from county jails for confinement in transfer facilities authorized by Subchapter G of Chapter 499 of the Texas Government Code and a transfer policy to transfer eligible inmates from transfer facilities to other facilities of the institutional division.

Cross reference to statute: Government Code, Chapter 499, Subchapter G, Code of Criminal Procedure, Article 42.09, §8(a).

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

Eligible inmate—An inmate for whom paperwork and processing required under the Code of Criminal Procedure, Article 42.09, §8(a), for transfer of the inmate to the division has been completed; and who would otherwise be confined in a county jail awaiting transfer to the division following conviction of a felony or revocation of probation, parole, or release on mandatory supervision.

§152.22. Admissions Policy.

(a) The institutional division is authorized to operate, maintain, and manage transfer facilities to confine eligible inmates by Chapter 499 of the Texas Government Code. The Code, §499.153, requires the Texas Board of Criminal Justice to adopt and enforce an admissions policy to accept from county jails eligible inmates for confinement in transfer facilities authorized by this subchapter.

(b) In creating the transfer facility admissions policy, the Board proposes the same factors and weights adopted for the allocation formula, 37 TAC §§152.1-152.3 of this chapter (relating to General Allocation Rules) and revised and published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 5083). Specifically, the formula includes and weighs each of the following factors, of which the first seven are statutorily required:

(1) the percentage of prison admissions for the entire state that were admitted from the county in the preceding 12 months;

(2) the percentage of the state's violent index crime that occurred in the county in the preceding 12 months;

(3) the percentage of the state's total index crime that occurred in the county in the preceding 12 months;

(4) the percentage of the state's total arrests under the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, that occurred in the county or counties in the preceding 12 months;

(5) the percentage of the state's population residing in the county or counties;

(6) the percentage of the state's total unemployment in the county or counties; and

(7) the percentage of all defendants serving sentences for felonies who were paroled from the institutional division, a jail in this state, or a jail or correctional institution in another state in the preceding

12 months and who were released to reside in the county or counties. The board added other discretionary factors which are not mandated by the legislature, specifically the following factors reflecting community effort:

(A) the county's percentage of the state's total number of persons placed on probation during the preceding calendar year, as determined by the Criminal Justice Division of the Texas Department of Cor-

rections. "Probation placements" are defined as including felons placed on regular probation, and felons placed in a special program, either through direct sentencing by the court or persons given shock probation;

(B) the county's percentage of the state's total number of persons completing probation during the preceding calendar year (as determined by the Community Justice Assistance Division) whose probations were terminated either

through early discharge or the expiration of the full term of probation;

(C) the county's percentage of the state's total funds expended by counties for juvenile probation services in the most recently audited county fiscal year, as determined by the Texas Juvenile Probation Commission staff.

(c) The board assigned the following weight to each statutory and discretionary factor.

STATUTORY FACTORS

(1)	Section 152.3(a)(1) - (historical admissions)	10
(2)	Section 152.3(a)(2) - (violent index crime)	15
(3)	Section 152.3(a)(3) - (total index crime)	20
(4)	Section 152.3(a)(4) - (drug crime arrests)	10
(5)	Section 152.3(a)(5) - (population)	5
(6)	Section 152.3(a)(6) - (unemployment)	5
(7)	Section 152.3(a)(7) - (parole releases)	10

DISCRETIONARY FACTORS

(8)	Section 152.3(b)(1) - (probation placements)	10
(9)	Section 152.3(b)(2) - (probation completions)	5
(10)	Section 152.3(b)(3) - (juvenile probation funding)	10

TOTAL 100%

(d) These weighted statutory factors and the community effort factors were applied to available transfer facility admissions to determine, employing normal rounding practices and allowing for holi-

days in the 12-month period, the number of admissions available to each county.

(e) The board may establish a minimum level of admissions, based on the timing of admissions transportation cycles, for

counties that would otherwise fail to receive a meaningful number of admissions, as determined by the board.

(f) This formula gives each county a fixed percentage of transfer facility admissions, as follows:

HIGH INTAKE COUNTIES

COUNTY	PERCENTAGE
HARRIS	0.2032160132
DALLAS	0.1663003963
TARRANT	0.0796031314
BEXAR	0.0685075666
TRAVIS	0.0441298347
EL PASO	0.0335080244
HIDALGO	0.0192422943
JEFFERSON	0.0191582528
NUECES	0.0185239355
GALVESTON	0.0137620425
CAMERON	0.0134770765
LUBBOCK	0.0111211632
MCLENNAN	0.0099753095

OTHER TEXAS COUNTIES

COUNTY	PERCENTAGE
ANDERSON	0.0019060292
ANDREWS	0.0007637495
ANGELINA	0.0035242485
ARANSAS	0.0011132216
ARCHER	0.0001628279
ARMSTRONG	0.0000274797
ATASCOSA	0.0010163291
AUSTIN	0.0006443978
BAILEY	0.0002179491
BANDERA	0.0003377232
BASTROP	0.0014780975
BAYLOR	0.0001607725
BEE	0.0010024531
BELL	0.0093453529
BLANCO	0.0001419114
BORDEN	0.0000092355
BOSQUE	0.0003390979
BOWIE	0.0042552040
BRAZORIA	0.0076237639
BRAZOS	0.0062496785
BREWSTER	0.0002524204
BRISCOE	0.0000325515
BROOKS	0.0014650590
BROWN	0.0015374278
BURLESON	0.0006873076
BURNET	0.0007922851

COUNTY	PERCENTAGE
CALDWELL	0.0011693211
CALHOUN	0.0011222522
CALLAHAN	0.0001997328
CAMP	0.0005000344
CARSON	0.0002422061
CASS	0.0010489416
CASTRO	0.0002437751
CHAMBERS	0.0011979257
CHEROKEE	0.0015107313
CHILDRESS	0.0002675469
CLAY	0.0002094074
COCHRAN	0.0001452232
COKE	0.0000894373
COLEMAN	0.0002858920
COLLIN	0.0088665184
COLLINGSWORTH	0.0001451434
COLORADO	0.0007613203
COMAL	0.0022671065
COMANCHE	0.0003692900
CONCHO	0.0000906901
COOKE	0.0008817377
CORYELL	0.0012962183
COTTLE	0.0000599367
CRANE	0.0001638905
CROCKETT	0.0000954501
CROSBY	0.0001271095
CULBERSON	0.0001172362
DALLAM	0.0003385674
DAWSON	0.0007328008
DEAF SMITH	0.0008378740
DELTA	0.0001491603
DENTON	0.0087257387
DEWITT	0.0004840093
DICKENS	0.0000859197
DIMITT	0.0004110602
DONLEY	0.0001490965
DUVAL	0.0004989445
EASTLAND	0.0007702446
ECTOR	0.0070969935
EDWARDS	0.0000501085
ELLIS	0.0035231099
ERATH	0.0009296333
FALLS	0.0007458921
FANNIN	0.0007683010
FAYETTE	0.0006158489
FISHER	0.0001136320
FLOYD	0.0002179004
FOARD	0.0000342806
FORT BEND	0.0080704829
FRANKLIN	0.0003123863
FREESTONE	0.0007375241
FRIO	0.0007243589
GAINES	0.0004669059
GARZA	0.0002152525

COUNTY

PERCENTAGE

COUNTY	PERCENTAGE
GILLESPIE	0.0004803775
GLASSCOCK	0.0000216268
GOLIAD	0.0001602611
GONZALES	0.0005674229
GRAY	0.0012360076
GRAYSON	0.0045767963
GREGG	0.0067439991
GRIMES	0.0007166037
GUADALUPE	0.0021954409
HALE	0.0013375319
HALL	0.0001437675
HAMILTON	0.0002601065
HANSFORD	0.0001106210
HARDEMAN	0.0001597552
HARDIN	0.0014810182
HARRISON	0.0027820248
HARTLEY	0.0000958408
HASKELL	0.0001892966
HAYS	0.0024954929
HEMPHILL	0.0000630902
HENDERSON	0.0025642244
HILL	0.0010198746
HOCKLEY	0.0007886326
HOOD	0.0010699938
HOPKINS	0.0013763053
HOUSTON	0.0006859952
HOWARD	0.0014020387
HUDSPETH	0.0003780513
HUNT	0.0034420762
HUTCHINSON	0.0009302413
IRION	0.0000649129
JACK	0.0001787666
JACKSON	0.0005367887
JASPER	0.0011235174
JEFF DAVIS	0.0000316516
JIM HOGG	0.0004342786
JIM WELLS	0.0016311348
JOHNSON	0.0034135974
JONES	0.0006956637
KARNES	0.0004162215
KAUFMAN	0.0026378973
KENDALL	0.0005390597
KENEDY	0.0000153993
KENT	0.0000081309
KERR	0.0015030948
KIMBLE	0.0003258490
KING	0.0000239949
KINNEY	0.0000796512
KLEBERG	0.0025726001
KNOX	0.0001378335
LA SALLE	0.0002338066
LAMAR	0.0026997249
LAMB	0.0004127210
LAMPASAS	0.0005067013

COUNTY	PERCENTAGE
LAVACA	0.0004153904
LEE	0.0004249352
LEON	0.0003779395
LIBERTY	0.0021594568
LIMESTONE	0.0009296898
LIPSCOMB	0.0000401211
LIVE OAK	0.0003041894
LLANO	0.0003152598
LOVING	0.0000089686
LYNN	0.0001877973
MADISON	0.0004079542
MARION	0.0005114977
MARTIN	0.0000802861
MASON	0.0000591178
MATAGORDA	0.0021728565
MAVERICK	0.0014719634
MCCULLOCH	0.0003483975
MCMULLEN	0.0000157342
MEDINA	0.0011842385
MENARD	0.0000815168
MIDLAND	0.0057841902
MILAM	0.0009471493
MILLS	0.0000641055
MITCHELL	0.0003315231
MONTAGUE	0.0004892893
MONTGOMERY	0.0075447554
MOORE	0.0006040322
MORRIS	0.0005786276
MOTLEY	0.0000216126
NACOGDOCHES	0.0020909032
NAVARRO	0.0023979589
NEWTON	0.0003623925
NOLAN	0.0008339982
OCHILTREE	0.0002732763
OLDHAM	0.0001469648
ORANGE	0.0038917178
PALO PINTO	0.0010563940
PANOLA	0.0010194393
PARKER	0.0017384619
PARMER	0.0002580864
PECOS	0.0007773038
POLK	0.0017535382
POTTER	0.0081666789
PRESIDIO	0.0001977603
RAINS	0.0002440577
RANDALL	0.0020673700
REAGAN	0.0001208807
REAL	0.0000977417
RED RIVER	0.0006187541
REEVES	0.0008881048
REFUGIO	0.0003392228
ROBERTS	0.0000186391
ROBERTSON	0.0009795073
ROCKWALL	0.0009324273

COUNTY	PERCENTAGE
RUNNELS	0.0004156462
RUSK	0.0018221816
SABINE	0.0002811198
SAN AUGUSTINE	0.0003257987
SAN JACINTO	0.0005466214
SAN PATRICIO	0.0028882090
SAN SABA	0.0001336228
SCHLEICHER	0.0000790440
SCURRY	0.0007129363
SHACKELFORD	0.0000863665
SHELBY	0.0008825652
SHERMAN	0.0001149230
SMITH	0.0078570818
SOMERVELL	0.0001641391
STARR	0.0013550044
STEPHENS	0.0002844636
STERLING	0.0000321242
STONEWALL	0.0000642225
SUTTON	0.0001072874
SWISHER	0.0002837168
TAYLOR	0.0064255749
TERRELL	0.0000322030
TERRY	0.0007364508
THROCKMORTON	0.0000366471
TITUS	0.0008922995
TOM GREEN	0.0052074798
TRINITY	0.0005265918
TYLER	0.0007008978
UPSHUR	0.0009901052
UPTON	0.0001559714
UVALDE	0.0009407426
VAL VERDE	0.0016784380
VAN ZANDT	0.0009827041
VICTORIA	0.0037097762
WALKER	0.0022530403
WALLER	0.0015195832
WARD	0.0005440423
WASHINGTON	0.0010474764
WEBB	0.0078283659
WHARTON	0.0019104969
WHEELER	0.0001412812
WICHITA	0.0067468348
WILBARGER	0.0008421088
WILLACY	0.0007944214
WILLIAMSON	0.0048387148
WILSON	0.0006501279
WINKLER	0.0003019327
WISE	0.0009603254
WOOD	0.0009719431
YOAKUM	0.0002973838
YOUNG	0.0005705815
ZAPATA	0.0002270760
ZAVALA	0.0003779018

§152.31. *Transfer Policy.*

(a) The Texas Administrative Code, §499.153, requires the Texas Board of Criminal Justice to develop, adopt and enforce a transfer policy to transfer eligible inmates from transfer facilities authorized by Subchapter G of Chapter 499 of the Texas Government Code to other facilities of the institutional division.

(b) The institutional division will transfer eligible inmates from the transfer facilities to other facilities of the institutional division within a time period not to exceed 12 months from the date of the inmate's confinement in a transfer facility, as required by the Texas Government Code, §499.155.

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 Huntsville, Texas, on September 24, 1993.

TRD-9329781

Cynthia N. Milne
General Counsel
Texas Department of
Criminal Justice

Proposed date of adoption: November 19, 1993

For further information, please call: (409) 294-2142

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Chapter 159. Special Programs

Subchapter A. Substance Abuse Treatment

• 37 TAC §159.1

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes new §159.1, concerning the eligibility criteria for placement of a defendant into a substance abuse felony punishment facility operated by the Texas Department of Criminal Justice.

The proposed new §159.1 explains the eligibility criteria which precludes a defendant from being placed in a substance abuse felony punishment facility. The new section provides that a defendant is not eligible to participate in a substance abuse treatment program at a substance abuse felony punishment facility if the individual has a detainer or pending charges filed against him/her; if the individual has a serious medical condition which could require periodic hospitalization or the individual may be susceptible to greater problems with the additions of stress; if the person has signs or symptoms of acute drug or alcohol withdrawal or requires detoxification; or if the individual suffers a substantial disorder of thought, mood, perception, orien-

tion, or memory which grossly impairs judgement, behavior, the capacity to recognize reality, or the ability to meet the demands of life.

David McNutt, assistant director, Budget and Management Services, has determined that for the first five-year period the section is in effect, there will not be substantial fiscal implications for the proposed eligibility criteria for substance abuse felony punishment facilities as a result of enforcing or administering this new section.

Mr. McNutt also has determined that the proposed section will not have any substantial fiscal implications. As a result, there should not be any additional cost imposed on state or local governments over the next five and years and, because the section concerns only requirements placed on local governments, councils, and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to individuals will occur as a result of the implementation of this section.

Comments on the proposed section may be submitted to Dimitria D. Pope, Director, Texas Department of Criminal Justice-Community Justice Assistance Division, 8100 Cameron Road, Suite 450, Austin, Texas 78754-3897.

The new section is proposed under the Government Code, §493.009(b), and the Code of the Criminal Procedures, Article 42.12, §14.

§159.1. *Substance Abuse Felony Punishment Facilities Eligibility Criteria.*

(a) Legal criteria:

(1) A judge must place the defendant on community supervision under the Code of Criminal Procedure, Article 42.12, §14 or §22, for the defendant to be eligible.

(2) The defendant must be charged or convicted of a first, second, third, or "state jail" felony unless the offense is a felony under the Penal Code, §§21.11 (Indecency with a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 25.06 (Harboring Runaway Child).

(3) Substance abuse must have "significantly contributed to the crime or violation of community supervision" by the defendant.

(4) Defendants who are placed on community supervision under deferred adjudication are eligible for the program.

(5) Revoked probationers and parolees are not eligible for the program.

(b) Administrative criteria:

(1) Probationers with a detainer or pending charges are not eligible to participate.

(2) Persons with serious medical conditions who could require periodic hospitalization, or who are susceptible to greater problems with the addition of stress are not eligible to participate.

(3) Persons who have signs or symptoms of acute drug or alcohol withdrawal, or who require detoxification are not eligible to participate.

(4) Persons who "suffer a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgement, behavior, or the capacity to recognize reality or the ability to meet the demands of life" are not eligible to participate.

(c) Medical criteria. Although facilities will be available in the future to accommodate offenders with certain intensive or chronic medical problems (target date: January 1994), current facilities are unable to provide the full range of medical services that some offenders might require in order to participate fully in the program. In addition, due to the rigorous, stressful, and confrontational nature of the Therapeutic Community program, some physical, developmental, and psychological disorders are possibly exacerbated by this treatment modality or make the client inappropriate for treatment. Therefore, out of concerns for client safety, therapeutic integrity, and the ability of the clients to participate meaningfully or complete the Therapeutic Community program, some offenders are not appropriate for treatment in the Substance Abuse Felony Punishment Facilities. If there is a question about an offender's medical or psychological suitability to be able to participate in the Therapeutic Community program at a Substance Abuse Felony Punishment Facility, please call Health Services at the Texas Department of Criminal Justice at (409) 294-2228.

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 28, 1993.

TRD-9329553

Cynthia Milne
General Counsel
Texas Department of
Criminal Justice

Proposed date of adoption: November 19, 1993

For further information, please call: (409) 294-2140

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal Notice of action proposed under Article 5.97 must be published no later than the 10th day before the board adopts the proposal The Administrative Procedure Act does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333, Guadalupe, Austin)

The State Board of Insurance of the Texas Department of Insurance and the Commissioner of Insurance, at a public meeting scheduled for 9:00 a.m., November 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider a Texas Department of Insurance staff petition proposing adoption of mandatory endorsements to amend the refusal to renew provisions (Insurance Code, Article 21.49-2B, §7(d)) of the homeowners, dwelling, farm and ranch, and farm and ranch owners policies, amendments to Texas Personal Lines Manual rules regulating the insurer's nonrenewal notification, and the withdrawal of the current Board-prescribed nonrenewal notification form The proposed endorsements and manual rule amendments are necessary because of amendments to the Insurance Code, Article 21.49-2B, §7(d), enacted under House Bill 1461 by the 73rd Texas Legislature, which became effective on September 1, 1993

The proposed endorsements amend the refusal to renew provisions of the homeowners, dwelling, farm and ranch, and farm and ranch owners policies to provide that if an insured files two or more claims in a period of less than three years, the insurer may notify the insured in writing that if a third claim is filed during the three-year period, the insurer may refuse to renew the policy The proposed endorsements also include notice of the recent statutory change to §7(d) of Article 21.49-2B that if the insurer fails to notify the insured of the possible declination to renew after the second claim, the insurer may not refuse to renew the policy because of losses The proposed amendments to the Texas Personal Lines Manual Rules clarify that the notice to an insured regarding the refusal to renew a policy after the second loss in a period of less than three years must contain statutorily required information, including a list of the policyholder's claims Concomitantly, the Board will consider withdrawal of the existing promulgated notice of nonrenewal because of the amendment to §7(d) of Article 21.49-2B deleting the requirement that the notice must be in a form approved by the Board

Copies of the full text of the mandatory endorsements and manual rule amendments

are available for review in the office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the endorsements and rule amendments, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0993-20-I).

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 October 1, 1993

TRD-9329735 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Filed: October 1, 1993

The State Board of Insurance of the Texas Department of Insurance and the Commissioner of Insurance, at a public hearing under Docket Number 2066, scheduled for 9:00 a.m., November 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin will consider a staff petition proposing adoption of new and revised Windstorm, Hurricane, and Hail Exclusion Agreement endorsements to various residential property policies to provide for the exclusion of coverage of direct and certain indirect losses caused by windstorm or hail, and new and revised Texas Personal Lines Manual rules to govern the use of these endorsements and determine rate credits The proposed new and revised endorsements and new and amended personal lines manual rules are necessary because of recent revisions to the Texas Catastrophe Property Insurance Pool Act (Insurance Code, Article 21.49) enacted under House Bill 1461 by the 73rd Texas Legislature, which require the Texas Catastrophe Property Insurance Association (TCPIA) to provide coverage for indirect losses caused by windstorm or hail when a companion policy issued in the voluntary market specifically excludes coverage for these indirect losses These legislative changes became effective on September 1, 1993 The TCPIA provides windstorm and hail insurance to residents in 14 coastal counties who are unable to obtain such coverage in the voluntary market

Four existing endorsements (HO-140, TDP-001, TFR-051, and FRO-440) are proposed to be revised and four new endorsements (HO-140A, HO-140B, TDP-001A, and TFR-051A) are proposed for adoption to provide for the exclusion of coverage of direct and certain indirect losses caused by windstorm or hail from certain homeowners, dwelling, farm and ranch, and farm and ranch owners policies Rule changes and additions to the Texas Personal

Lines Manual are proposed to govern the attachment of these endorsements and the appropriate rate credit to be provided to policyholders when indirect loss coverage is excluded from these policies.

In other closely related but separate matters, the Board will consider in separate proceedings to be conducted under the Administrative Procedure Act (Texas Civil Statutes, Article 6252-13a; 73rd Legislature, Regular Session, Chapter 268, §1, 1993, Texas General Laws 737, 738 (to be codified at Government Code, Title 10, Ch. 2001)) nine new endorsements to TCPIA policies to provide for certain indirect loss coverages excluded in the companion voluntary market policy; amendments to TCPIA policy forms, and a revised TCPIA Manual, including incorporation of previous Board adopted changes, the addition of new rating rules based on new House Bill 1461 provisions, and the addition of rules and rates for the new indirect loss coverages.

Copies of the full text of the proposed endorsements and Texas Personal Lines Manual rules and rule amendments are available for review in the office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0993-21-I)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure

Issued in Austin, Texas, on October 1, 1993

TRD-9329734 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Filed October 1, 1993

The State Board of Insurance of the Texas Department of Insurance and the Commissioner of Insurance under Docket Number 2069, will hold a public hearing scheduled for 9:00 a.m. on November 10, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin to consider the adoption of an amendment to the Texas Automobile Insurance Plan of Operation (formerly referred to as TAIP, now TAIPA) The amendment is proposed in accordance with Article 5.96, which authorizes the Board to adopt standard and uniform manual rules and rating plans for motor vehicle insurance New Article 21.81, §3(f) of House Bill 1461 of the Texas Insurance Code mandates the creation of a competitive limited assignment distribution (LAD) to be in place not later than December 31, 1993 House Bill 1461 directs TAIP to continue to operate in accordance with Texas Civil Stat-

utes Article 670h, §35 as it existed immediately before the effective date of the Act until the Texas Automobile Insurance Plan Association established in the Act is operational. Because the Safety Responsibility Act prior to September 1, 1993, required Board approval of the Plan amendments, TAIP is seeking the Board's approval of this amendment. However, because House Bill 1461, §1.23, provides that on September 1, 1993, the effective date of the Act, the Commissioner of Insurance shall assume authority over all areas of activity of the Texas Department of Insurance except rate and policy form authority, TAIP is also seeking approval of the Commissioner. The petitioner provides that the seeking of dual approval of both the Board and the Commissioner is to provide comfort that the amendment has received all proper regulatory approval.

Under the amendment, "in return for the payment of a fee, a LAD Servicing Carrier assumes all automobile assigned risk

responsibility for another company, called the Excused Company. The amended LAD program permits the Excused Company and LAD Servicing Carrier to negotiate the LAD fee and other contractual matters, subject to minimum contract requirements." The petitioner is seeking approval of the amendment for policies assigned on and after January 1, 1994. The petition covers the eligibility requirements to be eligible as a servicing carrier; the LAD agreement, assignments and Quotas, renewal and non-renewal provisions, and assessments. The Board recommended that TAIP also consider providing a condition that the LAD agreements including the actual buy out fee, once executed, be filed for informational purposes with the Texas Department of Insurance. The Board may also consider other matters relating to the creation of the LAD.

The Board invites the general public and any interested persons to provide written comments to the Board by filing them with the Chief Clerk's Office no later than November 8, 1993, with a copy to Lyndon Anderson,

Associate Commissioner, Property and Casualty, P.O. Box 149104, MC #103-1A, Austin, Texas 78714-9104

Copies of the petition and the full text of the amendment are available for review in the Office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the amendment please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number A-0993-22).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure

Issued in Austin, Texas, on October 1, 1993.

TRD-9329733
Linda K. von
Quintus-Dorn
Chief Clerk
Texas Department
of Insurance

Filed: October 1, 1993

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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 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Standards

Other Responsibilities and Practices

• 22 TAC §501.46

The Texas State Board of Public Accountancy adopts an amendment to §501.46, without changes to the proposed text as published in the August 20, 1993, issue of the *Texas Register*, (18 TexReg 5562).

As a result of enforcing this section, the rule will be more accurate and precise because it sets forth additional references to other relevant statutes.

The amendment sets forth citations to other statutes which govern proprietorships, corporations, partnerships, limited liability companies, registered limited liability partnerships, and professional corporations.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding form of practice.

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 28, 1993.

TRD-9329560 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1993

Proposal publication date: August 20, 1993

For further information, please call: (512) 505-7066



• 22 TAC §501.49

The Texas State Board of Public Accountancy adopts an amendment to §501.49, without changes to the proposed text as published in the August 20, 1993, issue of the *Texas Register* (18 TexReg 5563).

As a result of enforcing this section, the rule will have the board's current address.

The public will be able to address complaints to the new address of the board.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding form of practice.

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 28, 1993.

TRD-9329561 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1993

Proposal publication date: August 20, 1993

For further information, please call: (512) 505-7066



Chapter 505. The Board

• 22 TAC §505.1

The Texas State Board of Public Accountancy adopts an amendment to §505.1, without changes to the proposed text as published in the August 20, 1993, issue of the *Texas Register*, (18 TexReg 5563).

As a result of enforcing this section, the rule will have the board's current address.

The rule reflects the reality of the location of the board's new offices.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the headquarters of the board.

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 29, 1993.

TRD-9329563 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1993

Proposal publication date: August 20, 1993

For further information, please call: (512) 505-7066



• 22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10, without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register*, (18 TexReg 4923).

As a result of enforcing this section, there will be greater efficiency and effectiveness of the board's standing committees.

The amendment merges the functions and responsibilities of the licensee and education committee and the sponsor compliance committee. The new committee will be called the continuing professional education committee. The amendment changes the name of the examination committee to the qualifications committee and expands its area of responsibility to include not only examinations but also educational qualifications and work experience requirements for CPA candidates.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding board committees.

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 28, 1993.

TRD-9329572 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 505-7066

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Chapter 511. Certification as CPA

CPA Examination

• **22 TAC §511.72**

The Texas State Board of Public Accountancy adopts an amendment to §511.72, with changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4924). The changes are the insertion of "Through the November 1993 examination" in subsection (a) and the moving of "This subsection expires December 1, 1993" from the end of subsection (a) to the beginning of subsection (a).

The amendment to the rule tracks the new subjects on the reformatted uniform CPA examination which is available after May, 1994, and gives an expiration date to the old examination.

As a result of enforcing this section, the board will use the new subjects on the reformatted uniform CPA examination available after May, 1994, from the American Institute of Certified Public Accountants.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding examinations.

§511.72. Uniform Examination-Subjects.

(a) This subsection expires December 1, 1993. Through the November 1993 examination, the board shall utilize the uniform CPA examination available from the American Institute of Certified Public Accountants covering the following subjects:

- (1) auditing;
- (2) business law;
- (3) theory of accounts; and
- (4) accounting practice.

(b) Beginning with the May 1994 examination, the board shall utilize the uniform CPA examination available from the American Institute of Certified Public Accountants covering the following subjects:

- (1) auditing;
- (2) business law and professional responsibilities;
- (3) accounting and reporting; and
- (4) financial accounting and reporting.

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 28, 1993.

TRD-9329575 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 505-7066

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Chapter 527. Quality Review

• **22 TAC §527.4**

The Texas State Board of Public Accountancy adopts an amendment to §527.4, without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4925).

As a result of enforcing this section, there will be more assurance that all CPA firms registered both before and after January 1, 1992, and performing accounting and/or auditing engagements will have a systematic review of their work product, producing a better-educated industry to provide the public with accounting services.

The rule provides that new practice units registered with the Board after January 1, 1992, shall enroll in the quality review program of a sponsoring organization within one year of its licensing date.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding quality review.

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 28, 1993.

TRD-9329576 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 505-7066

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• **22 TAC §527.6**

The Texas State Board of Public Accountancy adopts an amendment to §527.6, without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4926).

As a result of enforcing this section, there will be more assurance that CPAs properly report the results of their reviews to the board, producing a better-educated industry to provide the public with accounting services.

CPAs must provide the board with a copy of the acceptance letter received from the sponsoring organizations after their first review, and if corrective action was required, the final acceptance letter.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding quality review.

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 28, 1993.

TRD-9329562 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1993

Proposal publication date: July 27, 1993

For further information, please call: (512) 505-7066

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XI. Texas Juvenile Probation Commission

Chapter 345. Community Corrections Assistance Program

• **37 TAC §345.2**

The Texas Juvenile Probation Commission adopts an amendment to §345.2, without changes to the proposed text as published in the June 25, 1993, issue of the *Texas Register* (18 TexReg 4163).

The section functions to ensure that a greater number of juvenile-age children are impacted by the allocation of the Community Corrections Assistance Fund.

The section will provide the Commission with the authority to improve the effectiveness of juvenile services and provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services.

No comments were received regarding adoption of the section.

The amendment is adopted under the Texas Human Resource Code, §§141.001, 141.041, and 141.042, which provides the Texas Juvenile Probation Commission with the authority

to improve the effectiveness of juvenile services and provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services and to adopt rules for these purposes.

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 October 4, 1993

TRD-9329641 Bernard Licarione, Ph.D.
Executive Director
Texas Juvenile Probation
Commission

Effective date: October 21, 1993

Proposal publication date: June 25, 1993

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

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 12. Special Nutrition Programs

Child and Adult Care Food Program

• **40 TAC §§12.4, 12.7, 12.20, 12.26**

The Texas Department of Human Services (DHS) adopts amendments to §§12.4, 12.7, 12.20, and 12.26, without changes to the proposed text as published in the July 2, 1993, issue of the *Texas Register* (18 TexReg

4291). Action is pending on the adoption of §12.3, which was proposed in the same issue of the *Texas Register*.

The justification for the amendments is to establish fair and equitable standards for determining if an applicant can reasonably be expected to operate the Child and Adult Care Food Program (CACFP).

The amendments will function by improving program efficiency and increasing program integrity.

During the comment period, DHS received written comments on the proposal. DHS received comments from Child, Inc.; Children's Nutrition Services; Nutriservice, Inc.; Youngcare, Inc.; and All Seasons Nutritional Services, Inc. A summary of the comments and DHS's responses follow. Several comments were received on §12.3 and these will be addressed when DHS adopts that section.

Comment: Overall, commenters were in favor of the establishment of eligibility criteria for day care home sponsors and several commended DHS for its effort in developing the criteria.

Response: DHS acknowledges and appreciates their comments.

Comment: Several commenters provided comments related to possible procedures to implement the rules. In addition, three commenters addressed issues unrelated to this rule publication, including criteria related to appropriateness of staff for the function they perform, staff-to-facility ratios, and a prohibition against paying day care home monitors and recruiters on a "per-unit" basis

Response: DHS appreciates the suggestions regarding procedural implementation of the rules and will incorporate those suggestions as appropriate. It appears that the commenters based their comments on a mistaken impression of the content of the proposed rules as published, resulting in comments on requirements that were not

published. Although DHS has received confirmation from the United States Department of Agriculture (USDA) that the development of eligibility criteria based on the areas addressed by the commenters is consistent with CACFP federal regulations, no such criteria have been developed for consideration at this time.

Comment concerning §12.7(b) Two commenters expressed concern about the level of detail contained in this rule, questioning whether the DHS Board should approve rules without knowing of the procedures that will be developed to implement them

Response: DHS has determined that the rules as proposed are consistent with the criteria for rules published according to the Administrative Procedure Act and the filing requirements to the *Texas Register* as well as internal DHS rule-making guidelines. Therefore, DHS is adopting the subsection as proposed

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional 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 30, 1993.

TRD-9329630 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Effective date October 20 1993

Proposal publication date July 2, 1993

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

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Thursday, October 14, 1993, 10:00 a.m.
TAMU Experiment Station, FM 1294, 1/2 Mile East of I-27
Lubbock

According to the complete agenda, the Texas Soybean Producers Board will discuss and act on minutes and financial report-Blacketer, prioritize research funding for FY 1994, discussion USB report-Pyle, Burnside; ASA report-Matteson, Burnside, referendum report, old business; new business; meet in executive session to discuss the evaluation of and duties of executive staff in accordance with Government Code, §551.074 (1993), and reconvene to take action

Contact: Trent Roberts, P.O. Box 650290, Dallas, Texas 75265-0290, 1 (800) 247-8691

Filed: September 30, 1993, 3:54 p.m.
TRD-9329658

Texas Commission on Alcohol and Drug Abuse

Wednesday, October 6, 1993, 9:00 a.m.
710 Brazos Street, Perry Brooks Building, Eighth Floor Conference Room
Austin

According to the emergency complete agenda, the Audit Review Committee will call the meeting to order, consideration of internal audit function, review of internal audit report, review of FY 1994 targeted performance measures, and adjourn

Reason for Emergency: The emergency status was necessary as action was needed in order to meet Legislative Budget Board request regarding itemized operating budget and targeted performance measures for FY 1994.

Contact: Otis E. Williams, 710 Brazos Street, Austin, Texas 78701, (512) 867-8720.

Filed: October 4, 1993, 1:35 p.m.
TRD-9329784

Monday, October 18, 1993, 1:00 p.m.
13033 Landmark
Houston

According to the complete agenda, the Offender Credentialing 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 78701-2576, (512) 867-8257.

Filed: October 5, 1993, 8:45 a.m.
TRD-9329800

Texas Bond Review Board

Tuesday, October 12, 1993, 9:00 a.m.
Clements Building, 300 West 15th Street, Fifth Floor, Committee Room #1
Austin

According to the agenda summary, the Staff Planning will call the meeting to order; approval of minutes, discussion of proposed issues, other business; and adjourn. The Board will call the meeting to order; meet in executive session, and adjourn.

Contact: Jim Thomassen, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741

Filed: October 4, 1993, 4:18 p.m.
TRD-9329795

Texas Employment Commission

Tuesday, October 12, 1993, 9:00 a.m.
TEC Building, 101 East 15th Street, Room 644
Austin

According to the agenda summary, the commission will approve prior meeting notes; executive session to consider relocation of agency headquarters, Diana Garza-Gongora versus TEC, et al., and Edward Dale Jacknitsky versus TEC, et al.; actions, if any resulting from executive session; staff reports; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 41; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 4, 1993, 4:09 p.m.
TRD-9329794

Texas Ethics Commission

Tuesday, October 12, 1993, 9:30 a.m.
1101 Camino La Costa, Room 235
Austin

According to the agenda summary, the commission will call the meeting to order; roll call; and hold a public discussion on proposed rules and forms.

Contact: John Steiner, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-5800.

Filed: October 4, 1993, 11:44 a.m.

TRD-9329782

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Texas Commission on Fire Protection

Tuesday-Friday, October 12-15, 1993, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the Funds Allocation Advisory Committee will discuss approval of minutes of previous meeting; discussion of monitoring reports; discussion and possible action on: applications previously reviewed by the committee for which no recommendations were made to the commission; applications for assistance submitted by August 27, 1993; discussion and recommendation on the interest rate to be used for loans under the Fire Department Emergency Board; discussion and possible action: on changes to the rules of the Fire Department Emergency Program; regarding changes to the instructions, application, and contract forms used in the Fire Department Emergency Program; and discussion of equipment donation program.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: October 1, 1993, 8:09 a.m.

TRD-9329677

Wednesday-Friday, October 13-15, 1993, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the commission will meet in executive sessions; discussion regarding Ernest Emerson and Liz Atchley; discussion/possible action regarding advisory councils and committees; matters from the Volunteer Fire Fighter Advisory Committee; discussion/possible action concerning contract to administer Volunteer Certification Program; matters from the Fire Protection Personnel Advisory Committee; discussion/possible action regarding rules relating to eligibility of persons with criminal backgrounds for certification, registration, licensing, or holding a permit; discussion regarding intent of Senate Bill 1110; discussion/possible action on recommendations regarding staffing studies;

policies and procedures concerning fire department inspections/investigations of complaints; new rules under 37 TAC 401; recommendations from the Funds Allocation Advisory Committee; final adoption of amendments to rules under 37 TAC 521 and 37 TAC 531; final adoption of new rules under 37 TAC 503; reports/discussion from Mutual Aid Committee, Commission representative to Firemen's Training School Advisory Board; discussion/possible action regarding formation of a State-Wide Fire Code Committee; presentation by the United Way Foundation; matters from the executive director; new matters from the public; and discussion/possible action on future meeting dates.

Contact: Carol Menchu, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: October 1, 1993, 8:10 a.m.

TRD-9329678

Wednesday-Friday, October 13-15, 1993, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the complete agenda, the Fire Protection Personnel Advisory Committee will call the meeting to order; discussion and possible action concerning rules pending before the Texas Commission on Fire Protection relating to paid fire protection personnel and local fire departments regulated under Government Code, Chapter 419, Subchapter B; discussion and possible action on rule recommendations concerning Texas Government Code, §419.0321 (added by Senate Bill 1110) including definition of "fire suppression duties" for part-time fire protection employees.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: October 1, 1993, 8:09 a.m.

TRD-9329676

Wednesday, October 13, 1993, 1:00 p.m. and Thursday-Friday, October 14-15, 1993, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the Fire Alarm Advisory Council will discuss and possibly act on regarding interpretation process for alarm rules; discussion and possible action regarding: penalties, sanctions, and remedies for violations of Texas Insurance Code, Article 5.43-2, and 37 TAC Chapter 531; proposed rule amendments, new sections, or repeals under 37 TAC Chapter 531 concerning fire detection and fire alarm devices and systems; possible changes to the Fire Alarm Rules to create a new license

position to be known as "Fire Alarm Monitoring Superintendent"; discussion and consideration of written and oral comments to the proposed rule amendments, new sections, and repeals of existing rules under 37 TAC Chapter 531, relating to fire alarm systems regulated under Texas Insurance Code, Article 5.43-2, as published in the *Texas Register*.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: October 1, 1993, 8:07 a.m.

TRD-9329674

Saturday-Sunday, October 16-17, 1993, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the Volunteer Fire Fighter Advisory Committee will call the meeting to order; discussion/approval of previous minutes; consideration/discussion of matters from committee members and public; discussion and possible action on: recommendations from joint subcommittees with the State Firemen's and Fire Marshals' Association concerning rule changes relating to volunteer fire fighters and volunteer fire departments; proposed new rules and rule changes; regarding formal request to the commission to hold meetings during the quarterly commission meetings; recommendation for seeking recognition by the Key Rate credit committee for volunteer certification under the commission volunteer certification program and appointment of a liaison to the Key Rate Committee; rules for volunteer arson investigators; rules for volunteer fire inspectors; possible incentives for participation in commission certification program; contract to administer Volunteer Certification Program; possible rule changes required by Senate Bill 1110; draft of future rules relating to eligibility of persons with criminal backgrounds for certification, registration, licensing, or holding a permit in matters regulated by the commission; future meeting dates, times, and agenda items.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: October 1, 1993, 8:08 a.m.

TRD-9329675

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**Criminal Justice Division,
Office of the Governor**

Thursday, October 14, 1993, 9:00 a.m.

Capitol La Quinta Inn, 300 East 11th Street, Room 310

Austin

According to the complete agenda, the Texas Crime Stoppers Advisory Council will call the meeting to order; approval of minutes; special topics school and state conference updates; report on current projects; criminal justice division office re-organization; and adjourn.

Contact: David Cobos, P.O. Box 12428, Austin, Texas 78711, (512) 463-1784.

Filed: October 4, 1993, 4:36 p.m.

TRD-9329798

Texas Department of Health

Friday, October 8, 1993, 9:00 a.m.

Room N-320, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Asbestos Advisory Committee will discuss and possibly act on: additional rules for National Emission Standards for Hazardous Air Pollutants enforcement; proposed amendment concerning existing deficiencies in current asbestos rules; new composition of committee per Senate Bill 383; new travel voucher; budget update; different interpretations of the rules and procedures for inspections.

Contact: Todd Wingler, P.E., 1100 West 49th Street, Division of Occupational Health, Austin, Texas 78756, (512) 834-6610 or 1 (800) 572-5548. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 30, 1993, 4:45 p.m.

TRD-9329663

Thursday, October 14, 1993, 8:30 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Maternal and Child Health Advisory Committee will hear public comment; discuss approval of the minutes of July 8, 1993 meeting; discuss and possibly act on: subcommittee reports concerning services integration, and medical home regionalization of perinatal care; report on Texas Department of Health, Maternal and Child Health activities including Women, Infants and Children immunization initiative, disease control immunization initiative, building blocks update, and school health report, presentation by the Texas Commission on Alcohol and Drug Abuse; transition status including Mental Health Mental Retardation, family planning, Early Period Screening for Diagnosis Treatment, and managed care; report from the new Board of Health;

report from Health and Human Services Commission, and discussion of subcommittee structure and issues for work group.

Contact: Madelin Walls, 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 30, 1993, 4:45 p.m.

TRD-9329664

Friday, October 22, 1993, 10:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas HIV Medication Advisory Committee will discuss approval of minutes of previous meeting; discuss and possibly act on: staff reports (client data and budget); National Institute of Allergies and Infectious Diseases recommendations and update for antiretroviral drugs; Pneumocystis Carinii Pneumonia (PCP) treatment and prophylaxis update; and date of next meeting.

Contact: Sheral Skinner, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7357. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 30, 1993, 4:45 p.m.

TRD-9329662

Texas Higher Education Coordinating Board

Thursday, October 14, 1993, 1:40 p.m.

University of Texas-Austin, Main Building, Room #400, Stark Library

Austin

According to the complete agenda, the Campus Planning Committee will view and/or hear presentations from institutions who have proposals to be considered at the October 28-29, Coordinating Board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6250.

Filed: October 5, 1993, 9:13 a.m.

TRD-9329807

Friday, October 15, 1993, 9:30 a.m.

Texas Southern University, Room 217, 3443 Blodgett, General Services Building

Austin

According to the complete agenda, the Campus Planning Committee will view and/or hear presentations from institutions who have proposals to be considered at the October 28-29, Coordinating Board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6250.

Filed: October 5, 1993, 9:13 a.m.

TRD-9329806

Texas Department of Insurance

Monday, October 11, 1993, 1:00 p.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the department will consider whether disciplinary action should be taken against Alfredo and/or Ofelia Hernandez doing business as Raymondville Insurance Agency, Raymondville, who hold a Local Recording Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 1, 1993, 4:02 p.m.

TRD-9329723

Tuesday, October 12, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the department will consider whether the Aries Insurance Company's request for exemption to minimum capital and surplus for surplus lines insurers should be granted.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 1, 1993, 4:02 p.m.

TRD-9329721

Tuesday, October 12, 1993, 1:30 p.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the department will consider whether disciplinary action should be taken against Billy Garlon Williams, DeSoto, who holds a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 1, 1993, 4:02 p.m.

TRD-9329722

Wednesday, October 13, 1993, 10:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the department will consider whether disciplinary action should be taken against Steven L. Colvin, Waco, who holds a Group II, Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 1, 1993, 4:01 p.m.

TRD-9329718

Thursday, October 14, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the department will consider whether Hermitage Insurance Company's request for exemption to minimum capital and surplus for surplus lines insurers should be granted.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 1, 1993, 4:01 p.m.

TRD-9329719

Friday, October 15, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the department will consider whether disciplinary action should be taken against Michelle Barry, Amarillo, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Group II Insurance Agent's license, and Ronny Joe Trull, Sr., Lancaster, who holds a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 1, 1993, 4:02 p.m.

TRD-9329720

Friday, October 15, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the department will consider a request by Precision Valve Modification, Inc. for a hearing on calculation of premiums owed applicable to workers' compensation insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: October 1, 1993, 4:01 p.m.

TRD-9329717

Lamar University System, Board of Regents

Wednesday, October 6, 1993, 6:00 p.m.

John Gray Institute, Map Room, 855 Florida Street

Beaumont

According to the complete agenda, the board will call the meeting to order; meet in executive session, held under provisions of Vernon's Civil Statutes, Article 6252-17, §3(g), Personnel; consider appointment of vice president for finance and operations at Lamar University-Beaumont; reconvene in open meeting; consider appointment of vice president for finance and operations at Lamar University-Beaumont; and adjournment.

Contact: James A. Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: October 1, 1993, 3:46 p.m.

TRD-9329713

Texas Department of Licensing and Regulation

Thursday, October 14, 1993, 9:00 a.m.
(Rescheduled from September 23, 1993)

920 Colorado Street, E. O. Thompson Building, Tenth Floor

Austin

According to the complete agenda, the Inspections and Investigations: Air Conditioning will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Cecil Campbell doing business as Campbell Heating and Air Conditioning for violation of Texas Civil Statutes, Article 8861, §5(a), 16 TAC §75.90(a), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 475-2899.

Filed: October 1, 1993, 12:08 p.m.

TRD-9329701

Tuesday, October 26, 1993, 9:00 a.m.
(Rescheduled from September 23, 1993)

920 Colorado Street, E. O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations: Property Tax Consultants will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Efrain Martinez for violation of Texas Civil Statutes, Article 8886, 16 TAC §§6620(f)(4), (8), and (9), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 475-2899.

Filed: October 1, 1993, 12:09 p.m.

TRD-9329702

Texas State Board of Medical Examiners

Friday, October 1, 1993, 4:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the agenda summary, the Disciplinary Panel will consider the temporary suspension of two physicians: D. L. Reece, D.O. and Jack Blum, M.D. (Executive sessions under authority of Open Meetings Act, §551.071 and §551.074 of the Government Code, Article 4495b, §2.07(b), 2.09(o), 3.05(d), Texas Civil Statutes; and Attorney General Opinion H-484.

Reason for Emergency: The emergency status was necessary as information had come to the attention of the agency and required prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 202.

Filed: October 1, 1993, 1:38 p.m.

TRD-9329705

Texas Natural Resource Conservation Commission

Monday, October 11, 1993, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue

Austin

According to the agenda summary, the commission will hold a public hearing on the consolidated applications of Texas Utilities Mining Company, Application Numbers 5456 and TA-6978 for a water right permit.

Contact: Linda Sorrells P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 1, 1993, 4:18 p.m.

TRD-9329727

Tuesday, October 12, 1993, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 513

Austin

According to the agenda summary, the Irrigators Council will call the meeting to order; approve minutes of the meeting of August 11, 1993; certify successful irrigator and installer candidates; elect a chairman; new appointments to existing standing committees as well as formation and appointments to new committees; standing committee reports; status of rules; occupational certification consolidation of programs report; report from monitoring and enforcement; complaint against licensees, Douglas Goodwin, Rick Howle, Truman Bridges, Danny Cypert and non-licensees Jesse Gutierrez, Russell Stokes, and Frank D. Farmillette; and a chairman's report.

Contact: Joyce Watson, P.O. Box 12337, Austin, Texas 78711, (512) 463-7990.

Filed: October 1, 1993, 3:47 p.m.

TRD-9329715

Wednesday, October 13, 1993, 8:00 a.m.

1700 North Congress Avenue, Room 118
Austin

According to the agenda summary, the commission will consider approving the following matters: water quality enforcement; petroleum storage tank enforcement; air quality enforcement; examiner's proposal for decision; revisions to state implementation plan; executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: October 1, 1993, 5:06 p.m.

TRD-9329730

Wednesday, October 13, 1993, 9:00 a.m.

1700 North Congress Avenue, Room 118
Austin

According to the agenda summary, the commission will consider approving the following matters: proposed water quality permits; amendment to water quality permits; water quality permit renewals; district matters; water utility matters; settled hearings; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various ac-

tions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: October 1, 1993, 5:06 p.m.

TRD-9329731

Tuesday, November 2, 1993, 10:00 a.m.

Route 1, Box 95, Highway 115, Cypress Springs Country Club

Scroggins

According to the agenda summary, the commission will consider an application by East Texas Landfill, Inc. for Proposed Permit Number MSW2140 authorizing a Type 1 municipal solid waste management facility. The waste management facility is to be located east of the frontage road of County Road 4208, one mile north of the intersection of County Road 4280 and FM Road 515, approximately five miles west of the City of Winnsboro in Wood County.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875

Filed: September 30, 1993, 4:57 p.m.

TRD-9329673

Tuesday, November 16, 1993, 10:00 a.m.

301 North Thompson, Second Floor,
County Commissioner's Courtroom

Conroe

According to the agenda summary, the commission will consider an application by Western Waste Industries, Inc. for proposed Permit Number MSW 2188 authorizing a Type I municipal solid waste management facility and a Type IX gas recovery site. The waste management facility is located approximately one mile southeast of the intersection of FM 1484 (Airport Road) and SH Loop 336, and adjacent to the north side of SH Loop 336 in the ETJ of the City of Conroe, Montgomery County.

Contact: Cynthia Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: October 1, 1993, 5:06 p.m.

TRD-9329732

Texas Optometry Board

Thursday, October 14, 1993, 8:30 a.m.

Board Office, 9101 Burnet Road, Suite 214
Austin

According to the complete agenda, the board will receive orientation training from the executive director, based on materials prepared by the Texas Optometry Board for such purpose. A quorum of board members will not be present.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: October 4, 1993, 2:56 p.m.

TRD-9329792

Texas Board of Pardons and Paroles

Monday-Wednesday, October 11-13, 1993, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the panel(s), composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: September 30, 1993, 3:53 p.m.

TRD-9329656

Monday-Friday, October 11, 1993, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, the panel(s), composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: September 30, 1993, 3:53 p.m.

TRD-9329654

Thursday-Friday, October 14-15, 1993, 9:00 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the panel(s), composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject

to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: September 30, 1993, 3:53 p.m.

TRD-9329655

Thursday-Friday, October 14-15, 1993, 9:00 a.m.

Route 5, Box 258-A

Gatesville

According to the agenda summary, the panel(s), composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: September 30, 1993, 3:53 p.m.

TRD-9329653

Thursday, October 14, 1993, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, the panel(s), composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: September 30, 1993, 3:52 p.m.

TRD-9329652

◆ ◆ ◆
Texas State Board of Physical Therapy Examiners

Thursday, October 14, 1993, 10:00 a.m.

3001 South Lamar Boulevard, Suite 101
Austin

According to the complete revised agenda, the board in addition to previous items on agenda submitted will hold a public hearing on proposed rule 22 TAC 347, Registration of physical therapy facilities.

Contact: Sherry L. Lee, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: October 1, 1993, 2:03 p.m.

TRD-9329706

◆ ◆ ◆
Texas Public Finance Authority

Monday, October 11, 1993, 8:15 a.m.

8212 Barton Club Drive

Austin

According to the agenda summary, the Planning Session will include: introductions; TPFA History, What We Inherited; state of the agency; critical issues for board for FY 94-FY 95; break; TPFA duties and responsibilities; implications of legislative expansion; lunch; business strategies for FY 94-FY 95; conclusion; other business; and adjournment.

Contact: Michell Frazier, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544. Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Brett Larson or Evelyn Casper at (512) 463-5544. Requests should be made as far in advance as possible.

Filed: October 1, 1993, 3:34 p.m.

TRD-9329712

◆ ◆ ◆
Public Utility Commission of Texas

Thursday, December 16, 1993, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12289-application of Tex-La Electric Cooperative of Texas, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 30, 1993, 1:35 p.m.

TRD-9329643

Tuesday, January 18, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard
Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12085-application of South Texas Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a proposed transmission line within Brazoria County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 1, 1993, 10:53 a.m.

TRD-9329689

◆ ◆ ◆
Railroad Commission of Texas

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

According to the agenda summary, the commission will consider category determinations under Sections 102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: October 1, 1993, 10:55 a.m.

TRD-9329690

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

According to the complete agenda, the commission will be taken up for consideration and/or decision by the commission: commission budget, fiscal, administrative or procedural matters, strategic planning; personnel and staffing, including restructuring or transferring the Oil Field Theft Division; contracts and grants; may discuss comionetas operations; may discuss the State of Texas Emergency Management Plan, Annex GG, Emergency Recovery Plan; and may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Eileen Latham, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: October 1, 1993, 10:56 a.m.

TRD-9329691

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor
Conference Room 1-111

Austin

According to the complete agenda, the commission will consider and act on the personnel division director's report on division administrations, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981.

Filed: October 1, 1993, 10:56 a.m.

TRD-9329692

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the commission will consider and act on the office of information services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: October 1, 1993, 10:56 a.m.

TRD-9329693

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the commission will consider and act on the administrative services division director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: October 1, 1993, 10:56 a.m.

TRD-9329694

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the commission will consider and act on the automatic data processing division director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: October 1, 1993, 10:56 a.m.

TRD-9329695

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the commission will consider and act on the surface mining and reclamation division director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin Hodgkiss, P.O. Box 12967, Austin, Texas 78701, (512) 463-6901.

Filed: October 1, 1993, 10:57 a.m.

TRD-9329696

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the commission will consider and act on the division director's report on budget, personnel and policy matters related to operation of the alternative fuels research and education division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: October 1, 1993, 10:57 a.m.

TRD-9329697

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

Contact: Marcelo R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: October 1, 1993, 10:57 a.m.

TRD-9329698

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the agenda summary, the commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: October 1, 1993, 10:58 a.m.

TRD-9329699

Monday, October 11, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete revised agenda, the commission will consider pipeline safety questionnaire regarding customer owned service lines.

Contact: Mary McDaniel, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7166.

Filed: October 1, 1993, 4:28 p.m.

TRD-9329728

◆ ◆ ◆
Texas Real Estate Commission

Friday, October 8, 1993, 9:00 a.m.

1101 Camino La Costa, TREC Headquarters, Room 234, Second Floor

Austin

According to the complete agenda, the Subcommittee on Wood Destroying Insects Real Estate Inspector Committee will discuss and make possible recommendations on liaison to Structural Pest Control Board on reports and inspections; and adjourn.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900. For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Filed: September 30, 1993, 2:08 p.m.

TRD-9329645

Friday, October 8, 1993, 11:00 a.m.

1101 Camino La Costa, TREC Headquarters, Room 234, Second Floor

Austin

According to the complete agenda, the Enforcement Subcommittee Real Estate Inspector Committee will discuss and make possible recommendations on methods and procedures relating to inspector discipline; and adjourn.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900. For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting

Filed: September 30, 1993, 2:08 p.m.

TRD-9329646

Friday, October 8, 1993, 2:00 p.m.

1101 Camino La Costa, TREC Headquarters, Room 234, Second Floor

Austin

According to the complete agenda, the Education/Examination Subcommittee Real Estate Inspector Committee will possibly meet in executive session to discuss examination materials pursuant to Attorney General Opinion H-484; discussion and possible recommendations concerning examination, education or experience requirements, or courses; and adjourn.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900. For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Filed: September 30, 1993, 2:11 p.m.

TRD-9329647

Friday, October 8, 1993, 4:00 p.m.

1101 Camino La Costa, TREC Headquarters, Room 234, Second Floor

Austin

According to the complete agenda, the Standards of Practice Subcommittee Real Estate Inspector Committee will discuss and take possible action to recommend amendments to §534.222, concerning inspection standards of practice; and adjourn.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900. For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Filed: September 30, 1993, 2:11 p.m.

TRD-9329648

Saturday, October 9, 1993, 9:00 a.m.

1101 Camino La Costa, TREC Headquarters, Room 235, Second Floor

Austin

According to the complete agenda, the Real Estate Inspector Committee will call the meeting to order; minutes of August 28, 1993 meeting; public comments; reports from TREC staff; subcommittee reports; discussion and possible action on correspondence; discussion and possible recommendations to TREC concerning interagency relationship with the Structural Pest Control Board, proposed survey on standard report form, clarification of inspections performed under TREC contract addenda or amendments to TREC rules governing inspectors; date and place of next meeting; and adjourn.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900. For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two

days prior to meeting.

Filed: September 30, 1993, 2:11 p.m.

TRD-9329649

◆ ◆ ◆
Recycling Market Development Board

Tuesday, October 26, 1993, 2:00 p.m.

105 West 15th Street, Room 106, John H. Reagan Building

Austin

According to the complete agenda, the board will call the meeting to order (Garry Mauro, Chairman); introductory remarks (Garry Mauro, John Hall, Cathy Bonner, John Pouland); outline of General Land Office Research Plan (Garry Mauro); development of strategic plan (presentation by Mt. Auburn Associates); presentation by Multi-Block, Inc. (Terry Drews, President); general discussion; and adjourn.

Contact: Susan Cox, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5333.

Filed: October 5, 1993, 8:54 a.m.

TRD-9329804

◆ ◆ ◆
Structural Pest Control Board

Thursday, October 7, 1993, 9:30 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 1.126

Austin

According to the complete emergency revised agenda, the Integrated Pest Management information was previously submitted with original posting; and inadvertently listed wrong time.

Reason for Emergency: The emergency status was necessary as time was inadvertently listed 9:30 p.m. instead of 9:30 a.m. and public needed to know correct time.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: October 4, 1993, 1:35 p.m.

TRD-9329783

◆ ◆ ◆
Texans' War on Drugs, Inc.

Tuesday, October 12, 1993, 8:45 a.m.

Austin Stouffer Hotel

Austin

According to the agenda summary, the Board of Directors will call the meeting to order; establish quorum; approval of minutes; election/resignation of officers and directors; by-law amendments; adopt resolution; action on matters discussed in executive session; president's report; set meeting dates for 1994; other business; and adjourn.

Contact: Janis Fittel, 313 East Anderson Lane, #101, Austin, Texas 78752, (512) 452-0141.

Filed: October 4, 1993, 4:51 p.m.

TRD-9329799

◆ ◆ ◆
University of North Texas

Friday, October 8, 1993, 9:00 a.m.

University of North Texas, Board Room, Administration Building

Denton

According to the complete agenda, the Board of Regents will call to order; meet in executive session (Coordinating Board actions relative to stadium expansion; lease of missile base property); course fees; stadium expansion; and lease of missile base property.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: October 5, 1993, 8:46 a.m.

TRD-9329801

◆ ◆ ◆
University of Texas System

Friday, October 8, 1993, 10:00 a.m.

Room NB2.402, Simmons Biomedical Research Building, UT Southwestern Medical Center, 6000 Harry Hines Boulevard

Dallas

According to the complete revised agenda, the Board of Regents and Standing Committees will hold an additional executive session agenda item to posting dated September 27, 1993-U. T. M. D. Anderson Cancer Center; proposed settlement of medical liability claim.

Contact: Arthur H Dilly, P.O. Box N, U. T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: October 1, 1993, 2:57 p.m.

TRD-9329708

◆ ◆ ◆
On-site Wastewater Treatment Research Council

Sunday, October 12, 1993, 2:30 p.m.

Wyndham A Conference Room, Wyndham

Austin Hotel, 4410 Governor's Row (IH-35 at Ben White)

Austin

According to the emergency agenda summary, the council will convene; call roll of members; hear and act on previous meetings minutes as well as the executive secretary's report; appointments to the technical review, budget and operations, and quality assurance committees; discuss and act on FY 93-94 budget amendments; discuss Subchapter A-the Council Rules; and discuss and act on new and pending proposals and responses to RFP's; schedule ensuing meetings and make other announcements as necessary; and hear and respond to public comments.

Reason for Emergency: The emergency status is necessary as meeting scheduled to coincide with the Council's Second Annual Conference, October 10-12 at the same location.

Contact: Theodore H. Johns, 1700 North Congress Avenue, Austin, Texas 78711, (512) 463-3109.

Filed: October 4, 1993, 4:26 p.m.

TRD-9329796

Texas Workers' Compensation Commission

Thursday, October 7, 1993, 10:00 a.m.

Rooms 910-911, Southfield Building, 4000 South IH-35

Austin

According to the agenda summary, the commission will call the meeting to order; approval of minutes; action on Rule for adoption: Chapter 110-Required Notice of Coverage-General Provisions; discussion and possible action on rules for possible proposal and/or amendment; Chapter 124, Chapter 126, Chapter 129, Chapter 130, and Chapter 141; discussion and possible action on rules for amendment: Chapter 152 and Chapter 133; report on donations and gifts received; discussion and possible action on applications for certificate of authority to self-insure; executive session; action on matters in executive session; general reports; future public meetings; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3700.

Filed: October 1, 1993, 4:04 p.m.

TRD-9329724

Friday, October 8, 1993, 9:30 a.m.

Rooms 910-911, Southfield Building, 4000 South IH-35

Austin

According to the agenda summary, the Medical Advisory Committee will call the meeting to order; approval of September 3, 1993, minutes; discussion and possible approval of treatment guidelines; establish draft agenda; establish next meeting date; and adjournment.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-3700.

Filed: September 30, 1993, 10:20 a.m.

TRD-9329642

Texas Youth Commission

Thursday-Friday, October 12-13, 1993, 9:00 a.m. and 8:00 a.m. respectively.

Embassy Suites Hotel, 5901 North IH-35 Austin

According to the complete agenda, the Board will give report on audit of construction at Golden Triangle State School (information); meet in executive session under authority of Government Code, §551.071(a)(A); contract obligations and legal remedies pertaining to project to construct new state school in Jefferson County, and Government Code, §551.074(a)(1), selection of executive director

Contact: Jay Lindgren, P.O. Box 4260, Austin, Texas 78765, (512) 483-5071.

Filed: October 4, 1993, 4:08 p.m.

TRD-9329793

Regional Meetings

Meetings Filed September 30, 1993

The Aqua Water Supply Corporation Board of Directors met at 305 Eskew (Aqua Office), Bastrop, October 4, 1993, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 321-3943 TRD-9329657.

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, October 6, 1993, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060 TRD-9329650.

The East Texas Council of Governments JTPA Board of Directors met at the Kilgore Community Inn, Kilgore, October 7, 1993, at 11:30 a.m. (Revised agenda) Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9329659.

The Education Service Center, Region 10 Board of Directors met at the Region 10 Board Room, 400 East Spring Valley, Richardson, October 7, 1993, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas 75081, (214) 231-6301. TRD-9329651.

The Texas Municipal League Intergovernmental Risk Pool Executive Committee met at the Stouffer Hotel, 9721 Arboretum Boulevard, Austin, October 5, 1993, at 9:30 a.m. Information may be obtained from Marvin Townsend, 211 East Seventh Street, Austin, Texas 78701, (512) 320-1325. TRD-9329660.

Meetings Filed October 1, 1993

The Archer County Appraisal District Board of Directors met at the Appraisal District Office, 101 South Center, Archer City, October 6, 1993, at 5:00 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9329704.

The Austin-Travis County Mental Health Mental Retardation Center Public Relations Committee met at 1430 Collier Street, Board Room, Austin, October 6, 1993, at 12:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9329716

The Bosque County Central Appraisal District Appraisal Review Board met at 104 West Morgan Street, Meridian, October 6, 1993, at 9:00 a.m. Information may be obtained from Billye McGehee, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9329680.

The Brazos River Authority Water Quality Committee-Board of Directors will meet in the Skylab Room, West Tower, Hyatt Regency DFW Hotel, Dallas-Fort Worth Airport, October 8, 1993, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9329700.

The Creedmoor Maha Water Supply Corporation Water Board met at 1699 Laws Road, Mustang Ridge, October 6, 1993, at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113. TRD-9329679.

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, October 12, 1993, at 7:00 a.m. Information may be obtained from Jerry Lee, 1390 Har-

bin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9329681.

The Montague County Tax Appraisal District Board of Directors met at the Appraisal District Office, 312 Rusk, Montague, October 6, 1993, at 5:00 p.m. Information may be obtained from Wanda Russell, 312 Rusk Street, Montague, Texas 76251, (817) 894-6011. TRD-9329714.

The Trinity River Authority of Texas Executive Committee will meet at 5300 South Collins, Arlington, October 8, 1993, at 10:00 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9329703.

◆ ◆ ◆
Meetings Filed October 4, 1993

The Bell-Milam-Falls Water Supply Corporation Board of Directors met at the WSC Office, West FM 485, Cameron, October 7, 1993, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9329747.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number 1 Board of Directors will meet at 226 Highway 132, Natalia, October 12, 1993, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9329762.

The Callahan County Appraisal District Board of Directors will meet at 130-A West Fourth Street, Callahan County Appraisal District Office, Baird, October 11, 1993, at 7:30 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9329760.

The Canadian River Municipal Water Authority Board of Directors will meet at the Holiday Inn, 4005 Olton Road, Plainview, October 13, 1993, at 10:30 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325. TRD-9329761.

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35, Suite 100, Austin, October 13, 1993, at 1:30 p.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Austin, Texas 78704, (512) 443-7653. TRD-9329780.

The Central Appraisal District of Nolan County Board of Directors will meet at the Nolan County Courthouse, Third Floor, Sweetwater, October 8, 1993, at 7:00 a.m. Information may be obtained from Steven G. Beck, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9329759.

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, October 12, 1993, at 7:00 a.m. (Revised agenda). Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9329751.

The High Plains Underground Water Conservation District Number 1 Board of Directors will meet in the Conference Room, 2930 Avenue Q, Lubbock, October 12, 1993, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9329797.

The North Central Texas Council of Governments Regional Transportation Council will meet in Commissioners' Court, Dallas County Administration Building, 411 Elm Street, Dallas, October 11, 1993, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington,

Texas 76005-5888, (817) 640-3300. TRD-9329749.

The North Central Texas Council of Governments Regional Transportation Council will meet in the South Texas Room, Amon G. Carter Exhibits Hall, Will Rogers Memorial Center, 3400 Crestline Road, Fort Worth, October 12, 1993, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9329750.

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Meetings Filed October 5, 1993

The Central Appraisal District of Taylor County Board of Directors will meet at 1534 South Treadaway, Abilene, October 13, 1993, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9329805.

The Gregg County Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, October 11, 1993, at 9:00 a.m. Information may be obtained from Bill Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9329809.

The Tarrant Appraisal Review Board Appraisal District will meet at 2329 Gravel Road, Fort Worth, October 20-21, 1993, at 8:30 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9329808.

The Wise County Appraisal District Board of Directors will meet at 206 South State Street, Decatur, October 12, 1993, at 7:30 p.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 627-3081, Ext. 4. TRD-9329810.

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	10/04/93-10/10/93	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	10/01/93-10/31/93	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

[graphic]

Issued in Austin, Texas, on September 27, 1993.

TRD-9329644 Al Endsley
Consumer Credit Commissioner

Filed: September 30, 1993

Texas Education Agency Consultant Contract Award Notice

Description. This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. After publication of a consultant proposal request in the August 3, 1993, issue of the *Texas Register* (18 TexReg 5127), the Texas Education Agency on September 23, 1993, executed a contract with the Center for Assessment and Demographic Studies, Gallaudet University, Washington, D.C., to assist the agency's Division of Services for the Deaf in the refinement and continued implementation of an objective data-based accountability system for measuring educational outcomes within the regional day school program for the deaf.

Cost and Dates. The total amount of the contract is \$40,000. The beginning date of the contract is September 1, 1993 and the ending date is August 31, 1994.

Due Dates of Documents. The delivery date of the final report is October 31, 1994.

Issued in Austin, Texas, on October 1, 1993.

TRD-9329739 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: October 4, 1993

Request for Applications

RFA#701-93-029. This request for application is filed in accordance with the Texas Education Code, §11.2092, Investment Capital Fund.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications (RFA#701-93-029) from public school districts on behalf of an individual school campus that has demonstrated a prior commitment to campus deregulation and restructuring educational practices and conditions in partnership with school staff, parents and students; community and business leaders, school district officers; a nonprofit, community-based organization; and TEA. A separate application must be submitted for each campus for which a district is applying

Description. The purpose of this initiative is to help individual public school campuses implement practices and procedures consistent with deregulation and school restructuring to improve student achievement and increase parental and community involvement in the schools. Grants may be used for the training and community involvement in the schools. Grants may be used for the training and development of school staff, parents, and community and business leaders so they understand the academic standards and practices necessary for high academic achievement and appropriate strategies to deregulate and restructure the school to improve student achievement. Administrative personnel of a school that receives a grant must demonstrate the responsible use of the grant to achieve campus deregulation and restructuring to improve academic performance, implementation of a comprehensive

sive plan to ensure the continuous development and training of teachers, parents, and community leaders to understand academic standards, develop effective strategies to improve academic performance, and organize a large constituency of parents and community leaders to hold the school and school district accountable for achieving high academic standards; and ongoing progress in achieving higher academic performance.

Dates of Project. The initiative will be implemented as a two-year project to begin during the 1993-1994 school year. Funding for the 1994-1995 school year is contingent upon the successful completion of objectives and activities as described in the 1993-1994 application. Applicants should plan for a starting date of December 1, 1993, and an ending date of August 31, 1994, for year one of the project.

Project Amount. Funding will be provided for approximately 60 projects. Each funded school will receive funding for the 1993-1994 school year at a level not to exceed \$15,000.

Note: Funding is Contingent Upon Approval by the State Board of Education of Rules Affecting This Grant Program.

Selection Criteria. The TEA reserves the right to select from the highest ranking applications campuses on which 58.6% or more of all enrolled students are from low income families (campuses whose total percent of identified students from low income families exceeds the 1992-1993 state percent of students from low income families plus 15 percentage points) or campuses on which 31.3% or fewer of all enrolled students met the minimum expectations on all Texas Assessment of Academic Skills (TAAS) tests taken on the most recent administration of the TAAS (campuses whose total percent of students passing all tests taken on the Spring 1993 administration of the TAS (Grades 4, 8, 10) was at least 15 percentage points below the state average) and that present evidence of prior commitment and efforts to campus deregulation and to restructuring educational practices and conditions made in partnership with stakeholder groups previously identified.

Requesting the Application. A copy of the complete request for application (RFA#701-93-029) may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA Number in your request.

Further Information. For clarifying information about this request, contact James A. Johnson, Jr., Planner IV, Office of Education for Special Populations and Adults, Texas Education Agency, (512) 463-8992.

Deadline for Receipt of Application. The application must be received in the Document Control Center of the Texas Education Agency no later than 5.00 p.m., Wednesday, November 10, 1993.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329661
Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: September 30, 1993

Texas Environmental Awareness Network

Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, October 13, 1993, at 9:00 a.m. at the General Land Office, Stephen F. Austin Building, Eighth Floor Conference Room, 1700 North Congress Avenue, Austin, Texas 78701.

More information is available from John Williams, TEAN Secretary, at (512) 473-3227.

Issued in Austin, Texas, on October 1, 1993.

TRD-9329758
John Williams
Secretary
Texas Environmental Awareness Network

Filed: October 4, 1993

Texas Department of Health

Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Charles McCook, D.D.S. (registrant-R10292) of Post to cease and desist using any sources of radiation in his possession until his Certificate of Registration has been properly renewed and all health-related violations have been corrected. The bureau determined that the health-related violations found during a recent inspection may result in radiation exposure to the patient in excess of that required to produce a diagnostic image. The continued use of radiation sources not properly registered with the bureau constitutes an immediate threat to public health and safety. The registrant is further required to provide written evidence satisfactory to the bureau regarding the actions taken to correct the violations and the methods to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on October 1, 1993.

TRD-9329707
Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: October 1, 1993

Texas Historical Commission

Correction of Error

The Texas Historical Commission submitted an Open Meeting Notice, which was published in the August 20, 1993, issue of the *Texas Register* (18 TexReg 5609).

The meeting was written in past tense, it should read:

Texas Historical Commission

Friday, September 17, 1993, 9:30 a.m. The Texas Antiquities Committee of the Texas Historical Commission will

meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee will discuss approval of minutes of previous meeting of June 18, 1993: approval of amendment to Chapter 41; designate State Archeological Landmarks (SALS) in Harris, Galveston, Marion, Martin, Hays, and Wharton Counties; nominate SALS in Wharton, Hansford, Martin, El Paso, Live Oak and Webb Counties; Zilker Park project update; GIS presentation; State Marine Archeologist report; and will hear public comment and staff reports.

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Texas Department of Housing and Community Affairs

Notices of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs at 811 Barton Springs Road, Suite 100, Austin, at 10:00 a.m. on Friday, October 22, 1993, with respect to an issue of multi-family residential rental project revenue bonds (the Bonds) to be issued in a face amount of not more than \$17 million by the Texas Department of Housing and Community Affairs (the Issuer) and the proceeds of which will be loaned to the National Center for Housing Management, Inc., a national nonprofit corporation, to finance the acquisition and rehabilitation of five multi-family housing projects (collectively, the Project) as follows: Arrowood Apartments, 8304 South Course Drive, Houston, Texas 77072 (304 units); Aspen Chase Apartments, 11760 Ferguson Road, Dallas, Texas 75228 (324 units); Redbud Trail Apartments, 1300 North Redbud Boulevard, McKinney, Texas 75069 (150 units); Stone Creek Apartments, 328 Southwest Parkway, Lewisville, Texas 75067 (200 units); and Waterchase Apartments, 12365 Plano Road, Dallas, Texas 75243 (134 units). The Project will be owned by National Center for Housing Management, Inc. and will be initially operated and managed by Westbrook Management Company, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert B. Johnston at the Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 100, Austin, Texas 78704; (512) 475-3342.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Johnston in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Johnston prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of the Internal Revenue Code of 1986, §147(f), as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Bonds.

Individuals who require auxiliary aids for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on October 1, 1993.

TRD-9329725

Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: October 1, 1993

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Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs at 811 Barton Springs Road, Suite 100, Austin, at 10:30 a.m. on Friday, October 22, 1993, with respect to an issue of single family mortgage revenue bonds (the Bonds) to be issued in a face amount of not more than \$58,475,000 by the Texas Department of Housing and Community Affairs and the proceeds of which will be used to finance an estimated 1,050 single family residential mortgage loans made to eligible very low, low, and moderate income first-time home buyers for the purchase of homes located within the State of Texas. For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, for families of three or more persons, 115% (140% in certain targeted areas) of the median area income, and for individuals and families of two persons, 100% (120% in certain targeted areas) of the median area income. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the preceding three years. Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law.

All interested parties are invited to attend such public hearing to express their views with respect to Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Wiley Hopkins at the Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 100, Austin, Texas 78704; (512) 475-2116.

Persons who intend to appear at the hearing and express their views are invited to contact Wiley Hopkins in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Wiley Hopkins prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of the Internal Revenue Code of 1986, §147(f), as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Bonds.

Individuals who require auxiliary aids for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on October 1, 1993.

TRD-9329726

Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: October 1, 1993

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**Texas Natural Resource Conservation
Commission**
Consultant Contract Award

This award for consulting services is being filed pursuant to Texas Civil Statutes, Article 6252-11c, §6(a). The publication date inviting response for the Request for Proposals resulting in this contract award was June 25, 1993, (18 TexReg 4217). The consultant will advise and assist the Texas Natural Resource Conservation Commission in the development of a strategic plan for the state's involvement in expanding markets for Texas recyclable materials. The consultant is Mt. Auburn Associates, Inc., 408 Highland Avenue, Somerville, Massachusetts 02144. The total cost of the contract will not exceed \$121,003, and the term of the contract is September 1, 1993-May 31, 1994. In addition to monthly status reports, the consultant will provide the following reports to TNRCC: Inventory of Recycling and Market Development Responsibilities, Policies, and Programs in Texas, by October 29, 1993; Market Analysis of Key Materials, by December 17, 1993; Institutional Analysis, Policy Analysis, and Potentially Applicable Strategies and Tools, by January 21, 1994; Draft Strategy Development, by February 28, 1994; and Final Report, by March 31, 1994.

Issued in Austin, Texas, on October 4, 1993.

TRD-9329744 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation
Commission

Filed: October 4, 1993

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Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding the City of West Tawakoni (Permit Number 11331-01) on September 21, 1993, assessing \$11,760 in administrative penalties with \$9,760 deferred. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Raymond C. Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2053.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329672 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: September 30, 1993

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil

penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding the Webb County (Permit Number 12271-01) on September 21, 1993, assessing \$11,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2053.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329671 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: September 30, 1993

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Bob Smith (Permit Number 13509-01) on September 21, 1993, assessing \$6,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8090.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329670 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: September 30, 1993

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding National Convenience Stores, Inc. doing business as Stop N Go Number 1037 (No Permit) on September 21, 1993, assessing \$39,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8090.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329669 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: September 30, 1993

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Miller-Bowie County Farmers Association (No Permit) on September 21, 1993, assessing \$10,000 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8090.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329668 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed. September 30, 1993



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Gulf States Paint Company (Solid Waste Registration Number 30220) on September 21, 1993, assessing \$51, 600 in administrative penalties with \$26,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Bill Ballard, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8009.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329667 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed. September 30, 1993



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Thomas L. Baudat, T & W Water Service and B & B Sewer Company (Permit Number 12301-01) on September 21, 1993, assessing \$7,360 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Vic Ramirez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8090.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329666 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: September 30, 1993



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding the City of Avinger (Permit Number 10646-01) on September 21, 1993, assessing \$3,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2053.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329665 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: September 30, 1993



Notice of Application For Waste Disposal Permits

Attached are Notices of Applications for waste disposal permits. These notices were issued during the period of September 20-October 1, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Request for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

R. E. Adams; wastewater treatment facilities approximately 500 feet west of the intersection of Fairbanks-White Oak Road and West Little York Road, 100 feet north of West Little York Road, and approximately 12.5 miles northwest of the City of Houston central business district in Harris County; renewal; 12683-01.

Aristech Chemical Corporation; the applicant operates a polypropylene manufacturing facility; the plant site is on the north side of Strang Road, approximately 1,000 feet east of the intersection of Strang Road with State Highway 225, in Harris County; renewal; 02107.

Bayshore Industrial, Inc.; the applicant currently operates a plastic compounding plant; the plant site is approximately 850 feet west of the intersection of McCabe Road and State Highway 146, four miles south of the City of La Porte, Harris County; new; 03608.

City of Boerne; wastewater treatment facilities on the east side of the City of Boerne on Esser Road, approximately 0.1 mile north of its intersection with State Highway 46 in Kendall County; renewal; 10066-01.

City of Brownwood; wastewater treatment facilities north of Willis Creek at the southeast end of Hoover Avenue in the City of Brownwood in Brown County; amendment; 10565-01.

Town of Buckholts; wastewater treatment plant on the north side of the Town of Buckholts, approximately 1,600 feet northeast of U.S. Highway 190 and approximately 1,000 feet east of FM Road 1915 in Milam County; renewal; 11875-01.

Cameron Forged Products Company; the applicant currently operates the Cypress Steel Mill; the plant site is 10825 Telge Road, southwest corner of the intersection of Hempstead Highway and Telge Road, near the Town of Cypress, Harris County; renewal; 01402.

City of Carrizo Springs, wastewater treatment facilities approximately 1/2-mile northeast of the intersection of U.S. Highway 83 and State Highway 85 in the City of Carrizo Springs in Dimmit County; renewal; 10145-01.

Ennis M. Cooley; wastewater treatment facilities at 1910 Highway 6 South in the City of Houston in Harris County; renewal; 12427-01.

Fort Ben County Municipal Utility District Number 46; the Fort Bend County Municipal Utility District Number 46 Wastewater Treatment Facilities; the plant site is approximately five miles southeast of the intersection of U.S. Highway 59 and State Highway 6, on the east side of Thompson Ferry Road, 0.6 of a mile west of the intersection of State Highway 6 and Senior Road in Fort Bend County; renewal; 12782-01.

G. Heileman Brewing Company; the applicant operates the Lone Star Brewery; the plant site is about 1/4-mile north of Interstate Highway 10 where it crosses the San Antonio

River in the City of San Antonio, Bexar County; new; 03607

Harris County Municipal Utility District Number 180, wastewater treatment plant at 5042 Innsbruk approximately 1/3-mile east of the intersection of Borgeois Road and Bammel-North Houston Road in Harris County; renewal; 12127-01.

City of Joaquin; wastewater treatment facilities approximately 2,700 feet northeast of the intersection of Jackson Street and U.S. Highway 84 in the City of Joaquin in Shelby County; renewal; 12718-01

Kleinwood Joint Powers Board; the Kleinwood Central Wastewater Treatment Facilities; the wastewater treatment facilities are at 15903 Squyres, approximately 5,000 feet upstream from the crossing of Stuebner-Airline Road and Cypress Creek on the north bank of Cypress Creek in Harris County; renewal; 11409-01.

Vincent Maleche; the Herman Oak Mobile Home Village Wastewater Treatment Facilities, the plant site is at 6421 Herman Road, approximately 1.5 miles south of Greens Bayou and 1.0 mile east of Highway 59 in Harris County; renewal; 12626-01.

Mills Road Municipal Utility District, wastewater treatment facilities approximately 3,000 feet southwest of the intersection of Perry Road and Mills Road, northwest of the City of Houston in Harris County; renewal, 11907-01.

Mobil Oil Corporation, a plant which manufactures polyethylene; the plant site is along U S Highway 90 approximately two miles west of the city limits of Beaumont, Jefferson County, renewal, 02029

City of Nederland, the City of Nederland wastewater treatment facility; located immediately east of the intersection of Hardy Avenue and Avenue D, east of the main drainage canal in the City of Nederland in Jefferson County; the variance would authorize a three-year period in which to conduct a water quality study of the perennial canals in Jefferson County into which the City of Nederland discharges treated domestic wastewater effluent; renewal; 10483-002.

Needville Independent School District, wastewater treatment plant approximately three miles southeast of the City of Needville on State Highway 36 between the intersections of Roesler Road and Danhouse Road with Highway 36 in Fort Bend County; renewal; 12010-01

Orbit Systems, Inc.; the Grasslands Wastewater Treatment Facilities; the plant site is approximately 0.50 mile south of FM Road 1462 and 1.5 miles west of State Highway 288 in Brazoria County; renewal, 12672-01

Paul E. Orlando; Ed-Lou Mobile Home Park, the plant site is at 15110 Grant Road on the south bank of Faulkey Gully, approximately 800 feet northeast of Grant Road and approximately 600 feet west of Shaw Road in Harris County; renewal, 12600-01

Paktank Corporation; the Galena Park Terminal, a bulk liquid storage and transshipment terminal, the plant site is south of IH-10 and east of IH 610 Loop East at 1500 Clinton Drive in the City of Galena Park, Harris County, renewal, 01662

Phillips Petroleum Company, the applicant currently operates a petroleum refinery, a natural gas liquids processing

center, and a chemical manufacturing plant; the plant site is adjacent to State Highway 119, approximately one mile north of the intersection of State Highway 246 and State Highway 119 near the City of Borger, Hutchinson County; renewal; 01064.

Schmidt Manufacturing, Inc.; wastewater treatment facilities 1.7 miles northwest of the intersection of State Highway 6 and FM Road 512 (the City of Arcola) in Fort Bend County; renewal; 12658-01.

United Independent School District; proposed wastewater treatment facility will serve the United Independent School District. The wastewater treatment facilities are approximately 12,500 feet west of the intersection of U.S. Highway 83 and Espejo Molina Road in Webb County; new; 13665-01.

Tex-Sun Parks, l.c.; the Point West Subdivision Wastewater Treatment Facilities; the plant site is on the north side of Morton Road approximately four miles west of the intersection of Fry Road and Morton Road in Harris County; renewal; 12189-01.

Issued in Austin, Texas, on October 1, 1993.

TRD-9329729 Glona A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: October 1, 1993

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Public Hearing Notice

The Texas Natural Resource Conservation Commission (Commission) will conduct a public hearing to receive public comment and testimony on proposed new §293.180 polished in the October 4, 1993, issue of the *Texas Register*

Section 293.180 provides for appeal of the decision of a board of directors of a municipal utility district concerning the cost, purchase or use of facilities constructed for the district. It establishes the procedure for filing an appeal, outlines minimum criteria to be considered by the Commission, and includes a mechanism for the agency to recover the costs of processing an appeal, and provides a public hearing notice form.

The commission has scheduled the public hearing to be held on November 3, 1993, at 10.00 a.m. in Room 1149 of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin.

If you have any questions concerning this public hearing you may contact Irene Montelongo, Legal Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8069.

Issued in Austin, Texas, on October 4, 1993

TRD-9329745 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: October 4, 1993

North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG is requesting proposals to conduct a transit needs assessment for the City of Arlington. Various innovative strategies shall be formulated after considering and evaluating alternative travel modes and systems like demand-response minibus systems, local circulator systems, and park-and-ride lots.

Contract Award Procedures. The firm selected to perform this study will be recommended by the Project Review Committee (PRC), composed of members from NCTCOG, the City of Arlington, Arlington Independent School District, and representatives from local citizen groups. The PRC will evaluation criteria and methodology consistent with the services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendation and, if found acceptable, will issue an award of contract.

Regulations. NCTCOG in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Codes, §§2000d-2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all bidders that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

Due Date. Proposals must be submitted no later than noon, October 28, 1993, to David Faria, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 640-3300.

Issued in Arlington, Texas, on September 29, 1993.

TRD-9329748 Mike Eastland
Executive Director
North Central Texas Council of
Governments

Filed: October 4, 1993

◆ ◆ ◆
Texas State Board of Examiners of Psychologists

Correction of Error

The Texas State Board of Examiners of Psychologists adopted an amendment to 22 TAC §473.5, concerning miscellaneous fees. The rule appeared in the October 1, 1993, *Texas Register* (18 TexReg 6743).

The effective date published was incorrect it should read "Effective date: October 15, 1993".



The Texas State Board of Examiners of Psychologists adopted an amendment to 22 TAC 463.6, concerning experience. The rule appeared in the October 1, 1993, *Texas Register* (18 TexReg 6741).

In the preamble of the rule, paragraph six, line 10 should read "labeled school psychology, it is the individuals"



Public Utility Commission of Texas

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application under Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for Billing and Collection Services with Network Billing and Collections, Inc

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with Network Billing and Collections, Inc. Under Public Utility Commission Substantive Rule 23.27. Tariff Control Number 12342

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for Billing and Collection Services with Network Billing and Collections, Inc. The services pursuant to this customer-specific contract will be offered anywhere within the state of Texas where Network Billing and Collections, Inc. provides services to Southwestern Bell end users

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329710 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: October 1, 1993



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application under Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for Billing and Collection Services with Communication Telesystems, Int

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with Communication Telesystems, Int Under Public Utility Commission Substantive Rule 23.27. Tariff Control Number 12341.

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for Billing and Collection Services with Communication Telesystems, Int. The services pursuant to this customer-specific contract will be offered anywhere within the State of Texas where Communication Telesystems, Int. provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 30, 1993.

TRD-9329709 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed October 1, 1993



Railroad Commission of Texas

Notice of Hearing

The Railroad Commission of Texas will conduct a public hearing on a proposed amendment to §5.233, concerning charter operations for motor bus companies.

The public hearing will begin at 9:00 a.m., on October 22, 1993. The hearing will be held in the William B. Travis State Office Building, Room 12-126, 1701 North Congress Avenue, Austin.

The hearing will be conducted in compliance with the General and Special Rules of Practice and Procedure before the Transportation Division. Any interested member of the public may appear and offer comments. Cross-examination of witnesses will not be allowed, although the presiding examiner may ask questions of any person testifying.

Issued in Austin, Texas, on October 1, 1993

TRD-9329711 Mary Ross McDonald
Assistant Director, Legal Division-Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed October 1, 1993



Texas Rehabilitation Commission

Correction of Error

The Texas Rehabilitation Commission proposed an amendment to 40 TAC §113.4, concerning Comprehensive Rehabilitation Services. The rule appeared in the August 13, 1993, *Texas Register* (18 TexReg 5392). The rule contained a mistake due to a proof reading error on the part of the *Texas Register*

In 40 TAC §113.4(a)(3), it should read "physical, occupational, and speech-language pathology [therapy]".



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 28	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 26	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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