

Texas Register

Volume 18, Number 86, November 16, 1993

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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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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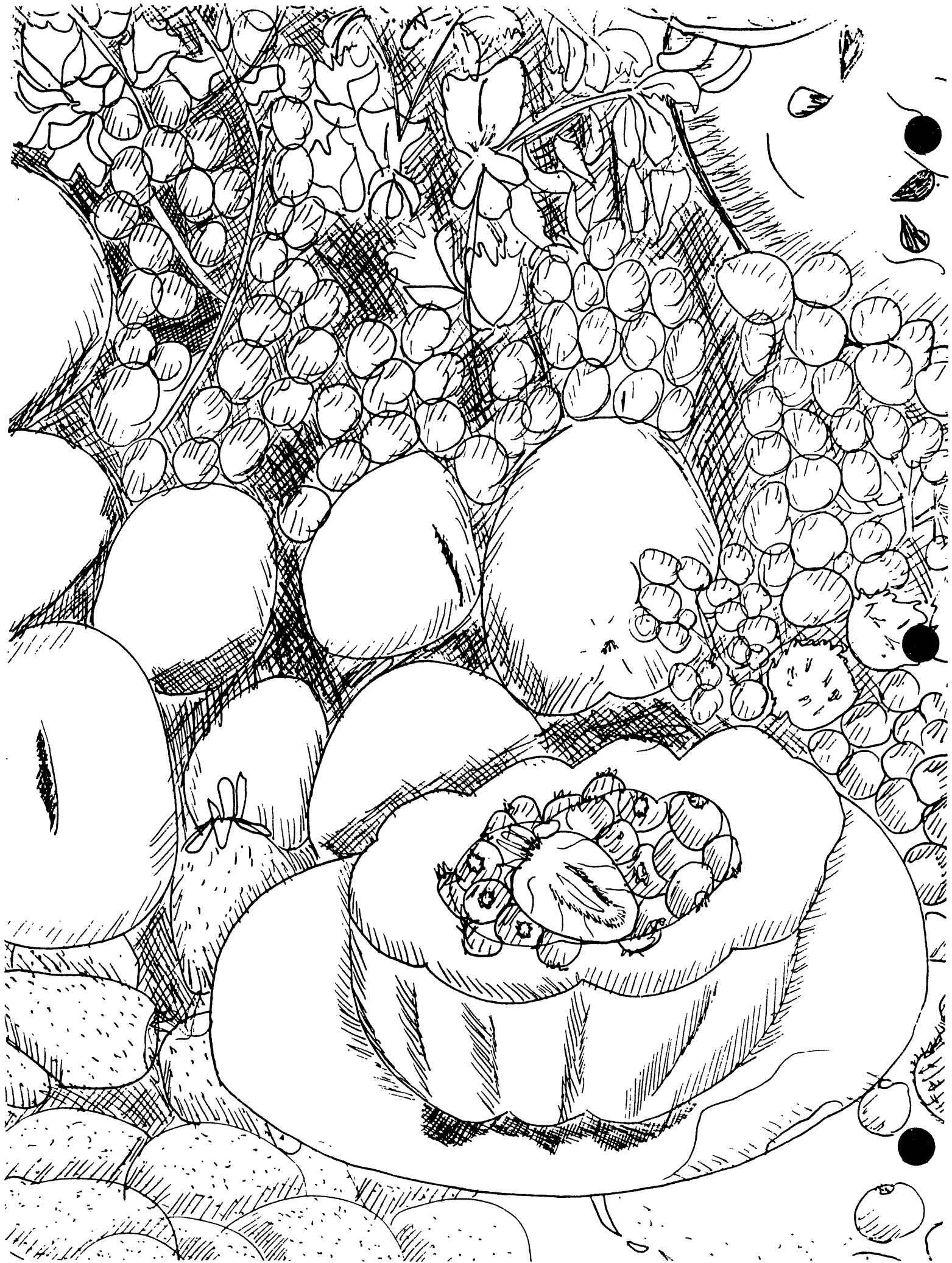
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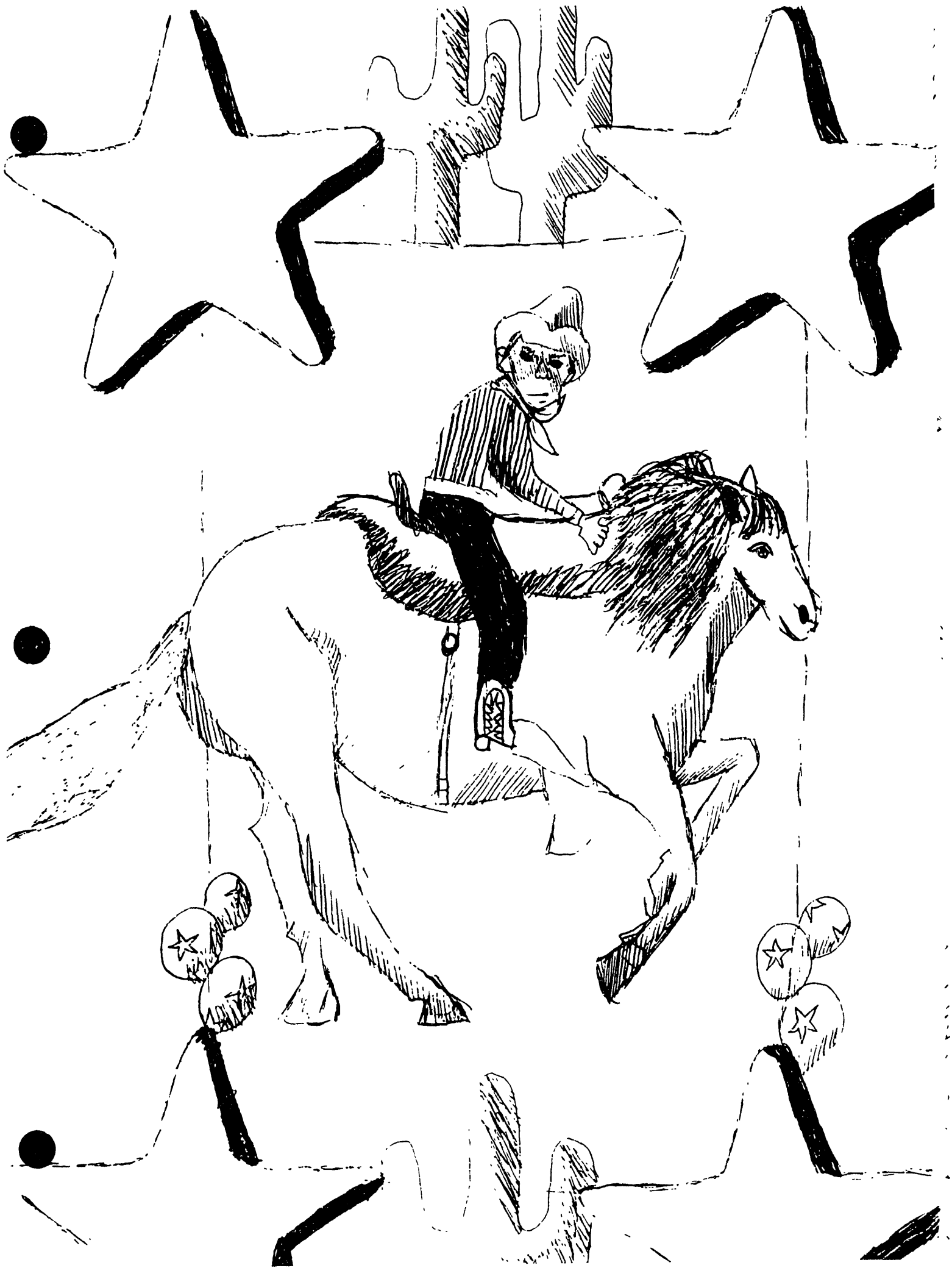
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Name Patrick Ducey
Grade 8
School Hendrick Middle School, Plano ISD

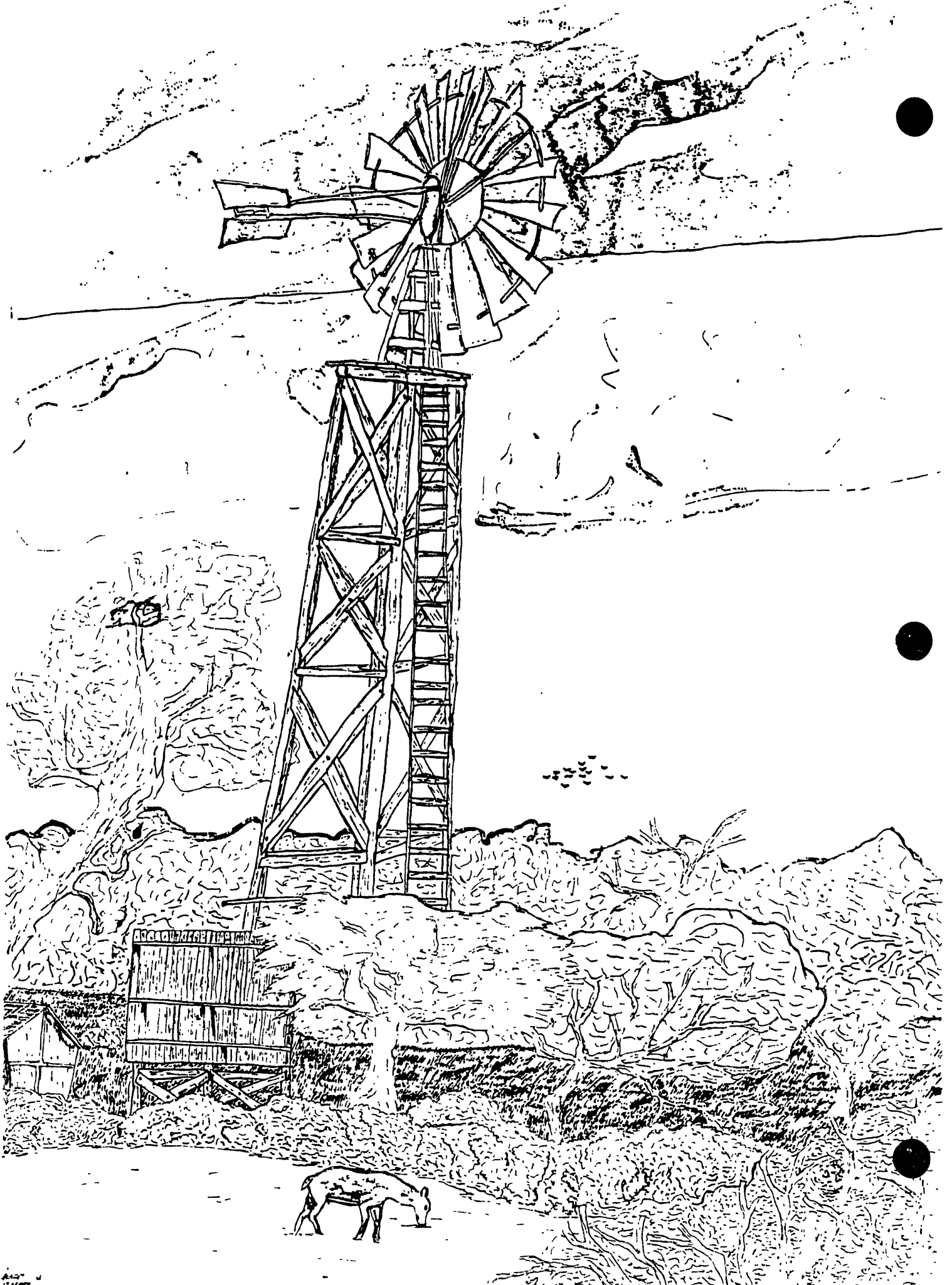
Patrick Ducey
Hendrick Middle School, Plano ISD











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-202. The Texas Ethics Commission has been asked to consider whether a lobbyist may offer and whether a hearings examiner from a state agency may accept an invitation to attend a potluck party at the lobbyist's home. The request letter states that the total cost of the food and beverages provided by the lobbyist would be \$5 and that each guest would bring a food or beverage item worth \$5.

AOR-203. The Texas Ethics Commission has been asked to consider the following questions:

1) Given the clear public purpose being furthered, can an employee use limited amounts of state time in creating, coordinating and distributing charitable materials to all employees? If not, can an employee use compensatory time or leave time to coordinate and distribute the materials to other

employees here at our office, during normal business hours?

2) Can an employee use limited amounts of state materials (i.e., paper) and equipment in creating, coordinating, and distributing charitable materials to all employees? If state materials such as paper cannot be used, can state equipment be used as long as there is no cost to the state (e.g., a state copier is used but paper is supplied by a private source)?

3) Can the agency head use his or her own personal resources to create or distribute fundraising materials or materials to agency employees during normal business hours which encourage employees to volunteer their time for charitable purposes?

4) Can an elected agency head use his or her officeholder account to fund the creation or distribution of fundraising materials or materials which encourage employees to volunteer their time for charitable purposes, with such materials being distributed to

agency employees during normal business hours?

The Texas Ethics Commission is authorized by the Government Code, Chapter 571, Subchapter D, §1.29, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 572, Subchapter D; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

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

Issued in Austin, Texas, on November 9, 1993.

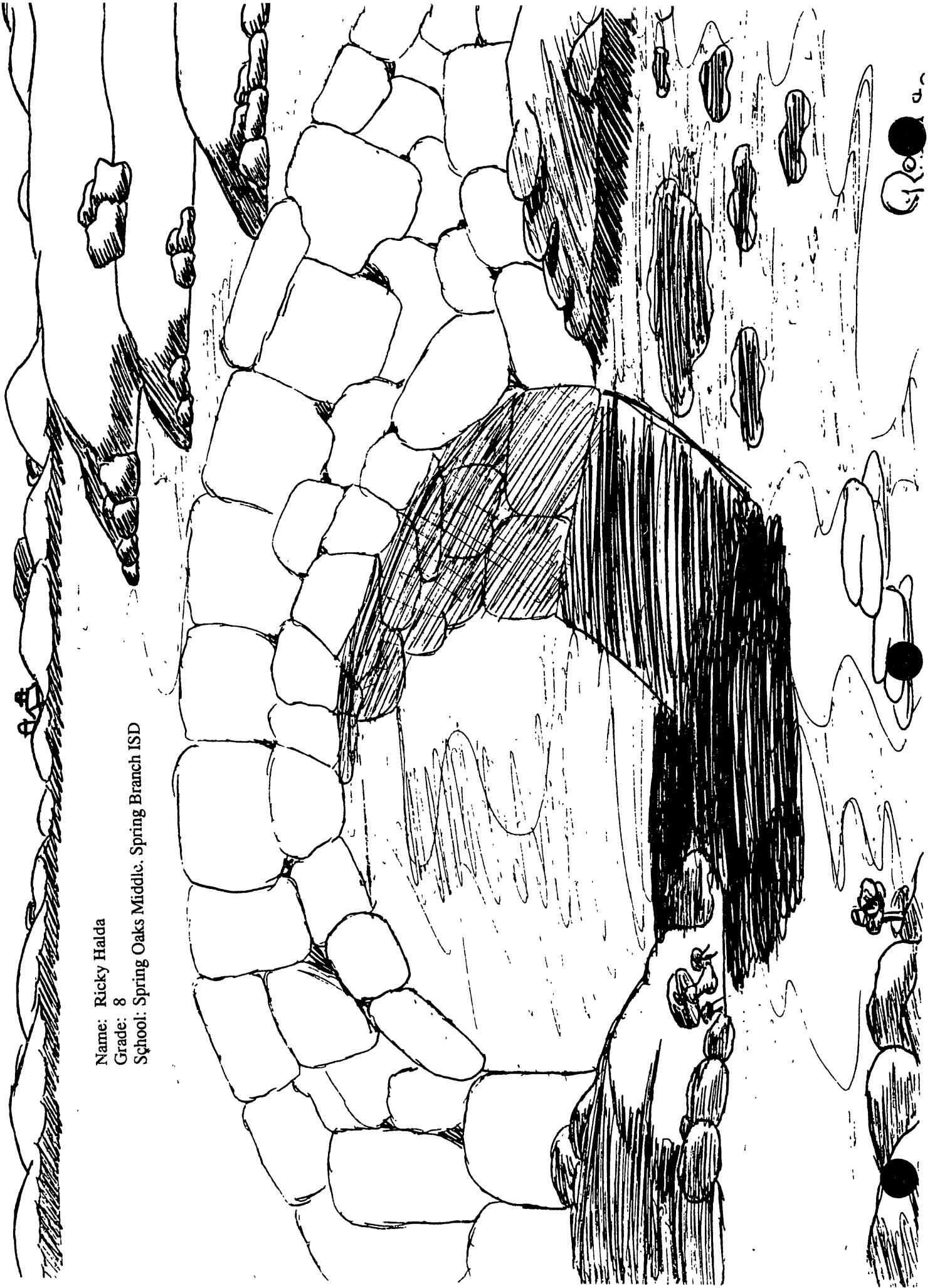
TRD-9331789

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: November 9, 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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter T. Single-State Registration of Interstate Motor Carrier Operations

• 16 TAC §§5.371-5.381

The Railroad Commission of Texas adopts on an emergency basis new Subchapter T, §§5.371-5.381, concerning Single State Registration of Interstate Motor Carrier Operations.

The emergency adoption of the new rules is necessary to allow ICC-licensed motor carriers to immediately register with the commission those operations authorized by the Interstate Commerce Commission. The rules are proposed as a result of enactment of House Bill 1590, 73rd Legislature, 1993, which authorized the commission to implement the single-state registration system provided by 49 United States Code, §11506, and Interstate Commerce Commission (ICC) rules at 49 Code of Federal Regulations, Part 1023, Standards for Registration with States. This federal statute requires all ICC-licensed motor carriers to comply with the single state registration standards to operate in all states of travel for which the motor carrier paid registration fees. The proposed rules for permanent adoption were published for public comment in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7451). The only revision to the proposed rules is the addition of the following language to the second sentence of §5.373(c), (relating to payment of fees): "on all of its vehicles for which an annual fee has not been paid to the commission pursuant to §5.152(f) of this title (relating to cab cards)." The revision is made as a result of comments provided at the November 3, 1993, public hearing on the proposed rules and will prevent dual payment on vehicles registered in both intrastate and interstate commerce.

The ICC rules governing the single state registration system are currently under appeal in federal district court, in the District of Columbia, in two cases styled *NARUC, et al v ICC, et al*, Number 93-1362 and *American Insurance Association, et al v ICC, et al*, Number 93-1450. The commission is a party appealing the ICC rules in case Number 93-1362. Issues in these appeals include the validity of

the ICC's rules on the maximum fee that participating states may charge carriers and the type of documents that each carrier must carry in vehicles as proof of registration. The emergency rules follow and are consistent with the ICC rules, however, the Commission in no way is waiving any issue or claim that it may assert in the referenced litigation. The proposed fee schedule in §5.373 reflects the maximum amounts determined proper by the ICC. This proposed fee schedule will be adopted pending resolution of the appeal of the ICC rules. The commission gives notice and reserves the right to readjust these fees if the ICC rules are determined by the court to be invalid. Similarly, other amendments to the commission's rules may be made pursuant to a final court ruling.

Without these emergency rules, numerous ICC-authorized motor carriers seeking to register in Texas may not be able to meet a registration deadline of November 30, 1993, imposed by the federal government. In addition, these regulations set fees which must be collected by the commission for other states by November 30, 1993. Under the federal law, an ICC-licensed motor carrier whose principal place of business is in Texas must file with the commission proof of liability insurance coverage. In addition, an ICC-licensed motor carrier must register its motor vehicles and pay registration fees to one state for all states of travel. Motor carriers seeking to register in Texas must be allowed adequate time in November 1993 to complete these tasks under adopted rules of the commission. Once a motor carrier complies with the registration requirement in Texas, the commission must provide the motor carrier a registration receipt, a copy of which must be carried in each registered motor vehicle. Without these emergency rules, the commission will not be able to ensure timely issuance of registration receipts to ICC-licensed motor carriers and, therefore, to allow such carriers an adequate time to distribute copies to their fleets prior to the deadline of January 1, 1994. For these reasons, the commission finds an imminent peril to the public safety and welfare if the new rules are not adopted on an emergency basis for a period of 120 days from the date of filing of the rules with the Texas Secretary of State.

The rules are adopted on an emergency basis as a result of House Bill 1590, 73rd Legislature, 1993, which authorizes the commission to take those actions necessary to participate to the fullest extent practicable in the single state registration system established by §4005 of Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (49 United States Code, §11506).

The code and statutes affected by the adopted rules are 49 United States Code, §11506, and Texas Civil Statutes, Article 911b.

§5.371 Participation in the Single State Registration System.

(a) The State of Texas, through the commission, participates in the single-state registration system established by the Intermodal Surface Transportation Efficiency Act of 1991, §4005 Title IV, (49 United States Code, §11506) and Texas Civil Statutes, Article 911b, §18a.

(b) Any motor carrier that has its principal place of business in Texas or selects Texas as its registration state under 49 Code of Federal Regulations, §1023.3, shall file with the commission an application to register for all states of travel as required by 49 United States Code, §11506 before beginning operations in Texas. A motor carrier authorized by the ICC to transport passengers or property that must register in a state other than Texas must fully comply with 49 United States Code, §11506 before operating in Texas.

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

Applicant—a motor carrier or carrier which files an application with a registration state for the purpose of complying with the standards promulgated under 49 United States Code, §11506.

Audit—a review of records and source documents of a registrant to determine its compliance with the requirements of this subchapter.

Cancellation of Registration—the annulment of a registration by the registrant.

The commission—the Railroad Commission of Texas.

Good standing—a registrant that meets the requirements of this subchapter, including, but not limited to, the filing of proof of insurance, designating an agent for service of process, filing of copies of interstate authority in the registration state, and filing changes to its name and/or address.

ICC—the Interstate Commerce Commission.

Jurisdiction—a State of the United States, the District of Columbia, a Province

Motor Carrier and Carrier—a person authorized to transport passengers or property, as a common or contract carrier, in interstate or foreign commerce, under the provisions of 49 United States Code, §§10922, 10923, or 10928.

Motor Vehicle—a self-propelled or motor-driven vehicle operated by a motor carrier in interstate or foreign commerce under authority issued by the ICC.

Person—an individual, corporation, partnership, association, trust, or other legal entity.

Principal Place of Business—a single location that serves as the motor carrier's headquarters and where it maintains or can make available its operational records.

Proof of Insurance—evidence filed with the commission by or on behalf of the registrant and which complies with the requirements of 49 Code of Federal Regulations, Part 1043.

Registrant—a motor carrier or carrier which holds a valid single-state registration, as defined in 49 Code of Federal Regulations, Part 1023, issued by the commission or a registration state.

Registration State—a state where the registrant maintains a valid single-state registration as defined in 49 Code of Federal Regulations, Part 1023.

Reinstatement—a restoration of privileges granted to a registrant by the commission or its registration state.

Registration Period—a period of time from August 1-November 30 of the year preceding a registration year.

Registration Receipt—a receipt issued to the registrant by its registration state after the requirements of 49 Code of Federal Regulations, Part 1023 have been met.

Registration Year—a period of time from January 1-December 31.

Revocation—withdrawal of registration and privileges by the commission or a registration state.

Single state registration system—the program established by 49 United States Code, §11506.

State—a state of the United States or the District of Columbia.

State(s) of travel—the state or states in which a motor carrier or carrier operates motor vehicles subject to the single state registration system.

Suspension—temporary removal of privileges granted to the registrant by the commission or a registration state.

Unlawful use—shall include, but not be limited to, the failure by a motor carrier subject to the single state registration system to meet the requirements of this subchapter, including, but not limited to, paying sufficient fees for the number of motor vehicles operating under a registration receipt, allowing another motor carrier to use or purchase a registration receipt issued to the registrant, altering of the registration receipt, or failing to maintain a cur-

rent listing of its agent for service of process.

§5.373. *The Registration Process.*

(a) **Initial registration.** To register under the single-state registration system for a first time, a motor carrier shall file with the commission a complete application on the commission's Forms RRC-1 and RRC-1A prescribed for registering all ICC motor carriers. The application must include a copy of the applicant's full interstate authority, unless the commission waives such requirement; a copy of ICC form BOC-3 concerning applicant's designation of agent(s) for service of process or a completed ICC form BOC-3; and the original signature of an authorized representative or its agent. In addition, the applicant must file proof of insurance showing its business address. The proof of insurance must be filed with the application form or that form will remain incomplete until proof of insurance is filed with the commission. The applicant shall indicate its legal status as a sole proprietor, partnership, corporation, or other valid legal entity, and the type of authority issued by the ICC. The application must contain the names of all owners, partners, officers, or persons with operation control; any d/b/a (doing business as) name it uses; and its business address. The applicant shall include in the application form whether it will be transporting hazardous commodities in interstate or foreign commerce. All information that the applicant submits to the commission must agree with information in the most recent ICC certificate or permit issued to the applicant.

(b) **Renewal of registration.** To renew its registration, a registrant shall follow the procedure outlined in subsection (a) of this section during the registration period before December 1st of the existing registration period. To renew its registration, the registrant will not be required to refile a full copy of its ICC authority.

(c) **Payment of Fees.** An applicant or registrant must submit with its original, renewal, or supplemental application the commission's Forms RRC-1 and RRC-1A with applicable information completed for all vehicles, whether owned or leased, that the applicant or registrant operates under ICC authority. The applicant or registrant shall remit to the commission the appropriate total fees due as indicated in the commission's Form RRC-1A, by cashiers check or money order in U. S. dollars, payable to the Texas State Treasurer, on all of its vehicles for which an annual fee has not been paid to the commission pursuant to §5.152(f) of this title. If an applicant or registrant has evidence of fees, collected or charged as of November 15, 1991, which are different from the fees specified in the commission's Form RRC-1A, the applicant

or registrant should submit such evidence to the commission with the application. After considering any such evidence, the commission will notify the applicant or registrant if the proper fee has not been paid.

(d) **Fees from others states.** Each participating state, in computing the appropriate portion of the revenue due the commission for its registrants, may utilize the commission's Form RRC-2 to determine the registrant's per-vehicle fee.

(e) **Temporary and emergency authorities.** A motor carrier that receives emergency temporary authority (ETA) or temporary authority (TA) from the ICC for 120 days or less must comply with all the commission's registration requirements, except filing a copy of the authority granted by the ICC. However, within 120 days after receiving an ETA or TA, the motor carrier shall comply with all registration procedures, or its registration may be revoked or suspended.

(f) **Waiver of filing complete ICC authority.** If the commission waives, in writing, the filing of the complete ICC authority that is longer than 20 pages, the applicant shall:

(1) provide the commission a copy of the portion of the ICC order that shows the service date and order section and

(2) file a prepared synopsis of the ICC authority.

(g) **Documents improperly filed.** If an applicant files or causes to be filed any document that contains any misrepresentation, misstatement, or omission of required information, or which does not include the payment of fees, the document shall be deemed to be incomplete and will not be processed by the commission until all items have been corrected.

§5.374. *Amendments and Changes After the Initial Registration.*

(a) A registrant must first notify the ICC if the registrant has changed its name or transferred its operating rights.

(b) A registrant in good standing:

(1) may add equipment and/or states of travel by payment of fees and the filing of a supplemental application with the commission; and

(2) shall register with the commission all amendments and revisions made by the ICC to the registrant's authority and operations.

(c) If, during the registration year, the registrant:

(1) is granted new ICC operating authority, changes its name and/or address, or receives any ICC order or

(1) is granted new ICC operating authority, changes its name and/or address, or receives any ICC order or reentitlement, it must file with the commission a copy of such document as soon as it is issued;

(2) adds states of travel or additional motor vehicles, it shall indicate in the application form that it is filing for "Supplemental Registration." If, during an annual registration process, a registrant adds state(s) of travel for the first time, the registration form should indicate: "Additional states not registered," and the additional states should be listed on the form; or

(3) has not filed additional information, it will attach to its annual registration application copies of additional authority grants, reentitlements, transfer orders, letters of change of name or address mailed to the ICC by the motor carrier or grants of self-insurance orders issued by the ICC not previously filed with the commission.

(d) To correct any application form, the motor carrier shall notify the commission in writing to amend its application form, or the motor carrier shall correct the application returned by the commission.

(e) Upon the written request of the registrant, the commission may cancel the motor carrier's registration and notify the registrant of such action by mail. The mail will show the effective date of cancellation.

§5 375. Change of Registrant's Principal Place of Business.

(a) A motor carrier's principal place of business for registration will be the business address the motor carrier indicated on the order issued by the ICC or, pursuant to a change of address, the business address reported by the registrant to the ICC. The business address of the registrant must be a physical address; a post office box is not acceptable. A mailing address may be given for mailing purposes only. An applicant domiciled in a rural area that does not have a street address may submit a rural route with a box number. The applicant may change its registration state if it changes its principal place of business or its registration state ceases or commences participation in the program.

(b) If the applicant's principal place of business is located in a jurisdiction that is not a participating state, the applicant shall apply for registration in the State in which the applicant will operate the largest number of motor vehicles during the next registration year. If the motor carrier will operate the same largest number of vehicles in more than one state, the applicant or registrant shall choose which participating state will be its registration state. A registration state

for a registrant may be changed only when the registrant changes its principal place of business or when its existing registration state ceases to participate in the single state registration system.

(c) When a registrant changes its principal place of business to another participating state, the registrant shall:

(1) notify its current and the new registration state within 30 days after making its selection,

(2) notify its insurer immediately, and

(3) refile in the new registration state all the documents required of a new registrant.

(d) If the registrant changes its principal place of business to a non-participating state, it shall retain the current registration state designation for registration purposes and file notice of business address change along with a new proof of insurance filing in its registration state.

§5 376 Designation of Process Agent. Using ICC form BOC-3, prescribed by 49 Code of Federal Regulations, Part 1044, the applicant shall designate a process agent for each state of travel. The motor carrier shall supplement the designation of process agent as necessary to ensure that current information is on file with the commission. If a registrant fails to maintain current the name of its process agent, the motor carrier's registration shall be subject to suspension

§5.377 Proof of Insurance.

(a) In all applications, the motor carrier shall indicate whether proof of insurance will be filed or has been filed with the commission and whether the motor carrier's public liability protection remains effective. The registrant shall immediately notify the commission of all changes in the status of the registrant's public liability protection. The commission will accept a facsimile of the applicant's or registrant's proof of insurance.

(b) The applicant shall cause to be filed and maintained with the commission proof of insurance in accordance with the levels and forms specified by 49 Code of Federal Regulations, Part 1043. The registrant's full name, including all owner names and any fictitious name or d/b/a, and business address on the proof of insurance, must be identical to such information in its application and its most recent ICC order. Proof of insurance shall be filed in the full and correct name of the individual, partnership, corporation, or person to whom the certificate or permit is issued. A "certificate of insurance" issued by an insurance agent will not be accepted as proof of insurance.

(c) A true copy of the applicant or registrant's public liability policy with the endorsements attached shall be maintained at the motor carrier's principal place of business.

(d) If the applicant has been approved for self-insurance by the ICC, the applicant shall indicate the status of such self-insurance on the application Form RRC-1 and shall file with the commission a copy of the ICC order approving a public liability self-insurance or other public liability security or agreement under the provisions of 49 Code of Federal Regulations Part 1043. The registrant shall immediately notify the commission if the self-insurance plan is suspended, revoked, or modified by an ICC order. Failure to comply may result in the suspension of the registration.

(e) The effective date of the cancellation notice for proof of insurance shall be computed as 30 days from the date notice is received by the commission. A cancellation notice received prior to a new filing shall terminate the liability within 30 days of notice to the commission.

(f) If an insurance company notifies the commission that information relating to an applicant or registrant's proof of insurance is incorrect or has been falsified, the commission may verify the insurance information of the insured. If the commission finds that incorrect or falsified filings have been made, the commission will notify the registrant(s) immediately and request new proof of insurance. If new and valid proof of insurance is not received, the commission will initiate a proceeding for suspension for non-compliance of filing proof of insurance.

§5 378. Registration Receipts.

(a) The registrant must retain its original registration receipt at its principal place of business for a period of three years. The registrant shall make the necessary copies of the registration receipt for each vehicle for which it paid fees. The registrant may not operate more motor vehicles in any participating state than the number for which fees have been paid.

(b) A copy of the registration receipt shall be carried in each motor vehicle of the registrant, and this shall qualify the registrant to operate under its ICC certificate or permit in all jurisdictions indicated on the registration receipt. Upon demand, the driver of a motor vehicle must present a copy of a registration receipt for inspection by any auditor of the Transportation/Gas Utilities Division of the commission and any law enforcement officer of Texas.

(c) A registration receipt:

(1) shall not be altered;

registration year for which it was issued, and

(3) may be transferred from vehicles taken out of service to the registrant's replacement vehicles.

(d) Altering the registration receipt shall subject the motor carrier's registration to revocation. Any law enforcement officer is authorized to confiscate the altered copy on sight. The confiscated registration receipt will be returned to the commission after any court action is completed by the state in which it was confiscated. Any copy of an expired registration receipt shall be replaced with a new copy of a current registration receipt, and the registrant shall destroy the old copies which have expired.

(e) The commission shall not replace lost or stolen receipts, except when the carrier fails to receive the registration receipt(s) mailed by the commission. A registrant may apply, without charge, for replacement receipts which it fails to receive. The request must be accompanied by an affidavit detailing the facts that support the non-receipt of the registration receipt.

(f) The commission shall mail the original receipt to the registrant. If a registrant needs to add states of travel to its operating fleet, it may request the commission to transmit a copy of a registration receipt before the receipt is mailed.

§5 379. Change of Name, Address, and Ownership of Registrant

(a) If the registrant changes its name, other than by transferring ownership, after the registration receipt has been issued, the registrant shall submit to the commission a copy of the reentitlement issued by the ICC. The registrant shall furnish proof of insurance to the commission in the new name.

(b) If the registrant changes its business address, it must file a copy of the notice (letter from the motor carrier to the ICC) submitted to the ICC for a similar change of address. If the business address change involves a street, route, box number or city, the registrant shall notify the commission in writing of that change. When the business address of the registrant has been changed, new proof of insurance must be filed with the commission.

(c) When ICC authority is transferred to a new owner, the current registrant must notify the commission to cancel its registration, and the new owner shall register with the commission.

§5 380 Failure to Comply

(a) Failure of the registrant to comply with provisions in this subchapter may result in suspension or revocation of its registration.

(b) Upon receiving notice of cancellation of a registrant's proof of insurance, the commission shall notify the registrant in writing that its registration to operate in all states of travel is suspended on the effective date of the cancellation of the insurance as specified in 49 Code of Federal Regulations, §1043.9(d). If insurance lapses because a proof of insurance has not been filed with the correct name and business address, the motor carrier's registration will be suspended until proper proof of insurance is filed with the commission.

(c) The commission shall revoke registration to operate in any state.

(1) if the registrant fails to comply with the insurance filing requirements 135 days from the effective date of a cancellation of insurance;

(2) if an ETA or TA has expired without permanent authority being granted by the ICC or the motor carrier has failed to file a copy of the permanent grant of authority before the expiration date, or

(3) if the motor carrier allows the unlawful use of a registration receipt.

(d) When sufficient proof of insurance or other items of compliance are filed and in effect after a suspension of the registration, the commission shall immediately reinstate the motor carrier's registration and notify the registrant that its registration, pursuant to these standards, is restored. The reinstatement notice shall be mailed to the registrant and show the effective date of such reinstatement. The reinstatement notice may be a letter, reinstatement order, or any other method of proper notice as determined by the commission.

(e) If the registrant believes that the commission has revoked its registration without good cause, it may petition the commission for reinstatement. Such petition for reinstatement shall be acted upon in accordance with the procedures specified in Chapter I and Subchapter U of Chapter 5 of this title.

(f) After a registration has been revoked or cancelled, a motor carrier wishing to operate pursuant to this subchapter must re-apply for registration with the commission. If the commission has copies of the motor carrier's ICC authority and the motor carrier indicates in writing that it has not received additional ICC authority, the commission shall waive the filing of copies of a motor carrier's authority. The motor carrier shall submit new proof of insurance. If the motor carrier has paid its annual per vehicle fee for the current calendar year, the commission shall not require payment of new fees.

(g) Nothing in these procedures shall prevent the commission from seeking

the imposition of criminal or civil penalties against any person or entity violating any provision in this subchapter.

§5 381. Auditing.

(a) The motor carrier shall maintain records and documents supporting fee payments and the original registration receipt(s) issued by the commission for a period of three years.

(b) The commission may audit any motor carrier at the carrier's principal place of business to ensure compliance with this subchapter. The commission may require the carrier to submit documentation for audit in Texas.

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Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

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For further information, please call. (512) 463-7095

TITLE 22. EXAMINING BOARDS

Part XXXII. State Board of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech Language Pathologists and Audiologists

The State Board of Examiners for Speech-Language Pathology and Audiology adopts on an emergency basis the repeal of existing §§741.2, 741.61, 741.81, 741.103, 741.143, and 741.181, and new §§741.2, 741.61, 741.62, 741.65, 741.66, 741.81, 741.82, 741.85-741.87, 741.103, 741.143, and 741.181, and amendments to existing §741.41 and §741.162. The sections define terms commonly used in the professions; establishes a code of ethics; sets out the requirements for speech-language pathology and audiology intern and provisional licenses, intern registration, and registration to fit and dispense hearing aids; establishes the required application material, the issuance of a license or registration, and renewal procedures for registration to fit and dispense hearing aids, and sets out applicable fees.

The repeals, new sections, and amendments are adopted on an emergency basis to comply with revisions to the Speech-Language Pathology and Audiology Act passed during the 73rd Legislative Session, effective September 1, 1993.

The repeals, new sections, and amendments were proposed for permanent adoption in a

previous issue of the *Texas Register*. The text of the repealed sections will not be printed in the *Texas Register* but may be examined in the board office.

Subchapter A. Introduction

• 22 TAC §741.2

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.2. Definitions.

Issued in Austin, Texas, on November 10, 1993.

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Gene R. Powers
Chairperson
State Board of Examiners
for Speech-Language
Pathology and
Audiology

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For further information, please call: (512) 834-6627

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

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

Act—The law relating to the licensing and regulation of speech-language pathologists and audiologists, Texas Civil Statutes, Article 4512j.

Assistant in audiology—An individual who works under the direct on-site supervision and direction of a licensed audiologist and is licensed under §741.84 of this title (relating to Requirements for a Licensed Associate in Audiology).

Assistant in speech-language pathology—An individual who works under the direct, on-site supervision and direction of a licensed speech-language pathologist and is licensed under §741.64 of this title (relating to Requirements for a Licensed Associate in Speech-Language Pathology).

Audiologist—An individual who meets the requirements of Subchapter E of this chapter (relating to Academic Requirements for Examination and Licensure for Audiologists) and holds a valid license to practice audiology.

Board—The State Board of Examiners for Speech-Language Pathology and Audiology.

Communication screening—Language and speech screening and, other than individuals licensed or exempted under this Act, may be conducted by individuals certified by the Texas Department of Health communication screening program.

Department—The Texas Department of Health.

Ear specialist—A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, and otorhinolaryngologists.

Extended absence—More than two consecutive working days for any single continuing education experience.

Health care professional—An individual required to be licensed or registered by this Act or any person licensed, certified, or registered by the state in a health-related profession.

Hearing aid/hearing instrument—A device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

Hearing screening—The screening of human hearing shall be defined as the pass/fail result of a pure-tone hearing sweep check administered with a pure-tone audiometer at intensity levels and frequencies appropriate for screening.

Intern in audiology—An individual completing the supervised professional experience as required by §741.81(10) of this title (relating to Requirements for a Audiology License) and licensed under §741.82 of this title (relating to Requirements for an Intern in Audiology License).

Intern in speech-language pathology—An individual completing the supervised professional experience as required by §741.61(10) of this title (relating to Requirements for a Speech-Language Pathology License) and licensed under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

License—The document required by the Act which provides verification that an individual has met the requirements for qualification and practice as set forth in the Act and as interpreted within this chapter.

Month—A calendar month.

Person—An individual, a corporation, partnership, or other legal entity.

Practice of audiology—The application of nonmedical principles, methods and procedures for the measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of rendering or offering to render services or for participating in the planning, directing, or conducting of programs which are designed

to modify communicative disorders involving speech, language, auditory, or vestibular function, or other aberrant behavior relating to hearing loss. An audiologist may engage in any tasks, procedures, acts, or practices that are necessary for the evaluation of hearing, for training in the use of amplification including hearing aid/hearing instrument, for the making of earmolds for hearing aid/hearing instrument, for the fitting, dispensing, and sale of hearing aid/hearing instrument or for the management of cerumen. An audiologist may participate in consultation regarding noise control and hearing conservation, may provide evaluations of environment or equipment including calibration of equipment used in testing auditory functioning and hearing conservation, and may perform the basic speech and language screening tests and procedures consistent with his or her training.

Practice of speech-language pathology—The application of nonmedical principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral pharyngeal function, or cognitive processes, for the purpose of rendering or offering to render services or for participating in the planning, directing, or conducting of programs which are designed to modify communicative disorders and conditions in individuals or groups of individuals. Speech-language pathologists may perform basic audiometric screening tests and aural rehabilitation or rehabilitation.

Provisional license—A nonrenewable license issued to an applicant who meets the requirements of §741.65 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.85 of this title (relating to Requirements for a Provisional Audiology License).

Registrant—An individual to whom a temporary certificate of registration or a registration to fit and dispense hearing aids/hearing instruments was issued.

Registration to fit and dispense hearing aids/hearing instruments—A registration issued to an audiologist or intern in audiology licensed under this Act who completed a form received from the board office that declared his or her intent to fit and dispense hearing aids/hearing instruments as required by §741.86 of this title (relating to Requirements for Registration of an Audiologist and Intern in Audiology who Fit and Dispense Hearing Aids/Hearing Instruments).

Sale or purchase—A lease or rental of a hearing aid/hearing instrument to a member of the consuming public who is a user or prospective user of a hearing aid/hearing instrument.

Speech-language pathologist—An individual who meets the requirements of

Subchapter D of this chapter (relating to Academic Requirements for Examination and Licensure for Speech-Language Pathologists) and holds a valid license to practice speech-language pathology.

Student in audiology—An individual pursuing a course of study leading to a degree with an emphasis in audiology and who works within the educational institution or one of its cooperating programs under the direct, on-site supervision and direction of an audiologist licensed under the Act.

Student in speech-language pathology—An individual pursuing a course of study leading to a degree with an emphasis in speech-language pathology and who works within the educational institution or one of its cooperating programs under the direct, on-site supervision and direction of a speech-language pathologist licensed under the Act.

Temporary certificate of registration—A nonrenewable document issued to an individual who meets all requirements for licensure as required by Section 741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) and is in the processing of taking the examination as required by §741.122 of this title (relating to Frequency).

Used hearing aid/hearing instrument—A hearing aid/hearing instrument that has been worn for any period of time by a user. However, a hearing aid/hearing instrument shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing aid/hearing instrument evaluation conducted to determine whether to select that particular hearing aid for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing aid/hearing instruments health professional selected by the dispenser to assist the buyer in making such a determination.

Year—A calendar year.

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Subchapter C. The Practice of Speech-Language Pathology and Audiology

• 22 TAC §741.41

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article

4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.41. Code of Ethics

(a) The purpose of [This section in] this subchapter is to establish [establishes] the standards of professional and ethical conduct required of a speech-language pathologist, an audiologist, an intern and an assistant licensed or registered under this Act, [a licensed associate in speech-language pathology, and a licensed associate in audiology] and constitutes a code of ethics as authorized by the Act, §17(a)(3). It is the responsibility of all [licensed] speech-language pathologists, [licensed] audiologists, interns, and assistants licensed or registered with this Act [licensed associates in speech-language pathology, and licensed associates in audiology] to uphold the highest standards of integrity and ethical principles.

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

(b) An audiologist or intern in audiology registered to fit and dispense hearing aid/hearing instrument under this Act must:

(1) adhere to federal Food and Drug Administration regulations in accordance with 21 CFR, §§801.420 and §801.421;

(2) provide clients with a written contract for services in this state that contains the name, mailing address, and telephone number of the board;

(3) follow the guidelines as set out in §741.86 of this title (relating to Requirements for Registration of an Audiologist and Intern in Audiology who Fit and Dispense Hearing Aids/Hearing Instruments);

(4) meet the most recent American National Standards Institute "ears covered" octave-band criteria for permissible ambient noise levels during audiometric testing; and

(5) receive a written statement before selling a hearing aid/hearing instrument that is signed by a licensed physician who specializes in diseases of the ear and states that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client may be a candidate for a hearing aid/hearing instrument. If the client is age 18 or over, the registered audiologist or intern in audiology may inform the client that the medical evaluation requirement may be waived as long as the registered audiologist or intern in audiology:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign this statement: "I have been advised by (the name of the individual dispensing the hearing aid/hearing instrument) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid/hearing instrument. I do not wish a medical evaluation before purchasing a hearing aid/hearing instrument".

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Subchapter D. Academic Requirements for Examination and Licensure for Speech-Language Pathologists

• 22 TAC §741.61

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act

§741.61. Purpose

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• 22 TAC §§741.61, 741.62, 741.65, 741.66

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.61. *Requirements for a Speech-Language Pathology License.* The purpose of this section is to delineate the academic, practicum, supervised professional experience, and examination required for licensure of a speech-language pathologist.

(1) An applicant must possess a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders from a program accredited by the American-Speech-Language-Hearing Association in an accredited or approved college or university.

(2) An applicant must have earned at least 75 semester credit hours that reflect a well-integrated program of study.

(3) At least 27 of the 75 semester credit hours must be in basic science coursework which includes at least:

(A) six semester credit hours in the biological/physical sciences and mathematics;

(B) six semester credit hours in the behavioral and/or social sciences; and

(C) 15 semester credit hours in the basic human communication processes, to include coursework in each of the following three areas of speech, language, and hearing:

(i) the anatomic and physiologic bases;

(ii) the physical and psychophysical bases; and

(iii) the linguistic and psycholinguistic aspects.

(4) At least 36 of the 75 semester credit hours must be in professional course work acceptable toward a graduate degree with at least 30 semester credit hours awarded graduate credit.

(5) At least 24 semester credit hours acceptable toward a graduate degree must be earned in the area of speech-language pathology as follows:

(A) six graduate semester credit hours in speech disorders;

(B) six graduate semester credit hours in language disorders; and

(C) other graduate semester credit hours in courses that include information on the understanding, evaluation, treatment and prevention of communication disorders across all age spans in a variety of disorders.

(6) Six semester credit hours must be earned in the area of audiology as follows:

(A) three semester credit hours in hearing disorders and hearing evaluation; and

(B) three semester credit hours in habilitative or rehabilitative procedures with individuals who have hearing impairment.

(7) A maximum of six academic semester credit hours associated with clinical practicum and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (5) and (6) of this subsection.

(8) An applicant must have completed a minimum of 375 clock hours of clinical experience with individuals who present a variety of communication disorders under supervision of an individual who holds a valid Texas license in speech-language pathology and who possesses a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders, completed the equivalent of 36 weeks of full-time supervised professional experience, and passed the national examination as required by §741.122 of this title (relating to Frequency). This experience must have been obtained within a educational institution, or in one of its cooperating programs. Clinical experience may be referred to as clinical practicum.

(A) At least 25 clock hours of clinical observation must be completed prior to beginning the clinical practicum that concerns the evaluation and treatment of children and adults with disorders of speech, language, or hearing.

(B) At least 350 clock hours of supervised clinical practicum that concern the evaluation and treatment of children and adults with disorders of speech, language, and hearing must be completed as follows:

(i) no more than 25 of the clock hours may be obtained from participa-

tion in staffing in which evaluation, treatment, and/or recommendations are discussed or formulated, with or without the client present;

(ii) at least 250 clock hours must be completed in speech-language pathology with at least 50 clock hours in each of three types of settings and completed in each of the following:

(I) evaluation of speech disorders in children;

(II) evaluation of speech disorders in adults;

(III) evaluation of language disorders in children;

(IV) evaluation of language disorders in adults,

(V) treatment of speech disorders in children,

(VI) treatment of speech disorders in adults;

(VII) treatment of language disorders in children, and

(VIII) treatment of language disorders in adults.

(C) At least 35 of the 350 clock hours must be in audiology as follows:

(i) at least 15 involved in the evaluation or screening of individuals with hearing disorders; and

(ii) at least 15 involved in habilitation/rehabilitation of individuals who have hearing impairment.

(D) While pursuing this course of study, the applicant shall be designated as a trainee in speech-language pathology

(E) Supervised clinical practicum earned at foreign universities shall be acceptable if the applicant follows procedures outlined in paragraph (9)(G) of this subsection.

(9) Original transcripts shall be required to process an application for licensure. Certified copies of transcripts shall be considered originals. Transcripts shall be reviewed as follows.

(A) Graduate degrees must have been completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association and holds accreditation or candidacy status from a recognized regional accrediting agency, such as the Southern Association of Colleges and Universities.

(B) The transcript must verify which courses received graduate credit.

(C) Semester credit hours that are acceptable may include upper division hours.

(D) The board shall only accept course work completed with a grade of at least a "C" or for credit.

(E) The board shall consider a quarter-hour of academic credit as two-thirds of a semester credit hour.

(F) Academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(G) Degrees and/or course work received at foreign universities shall be acceptable only if such course work and clinical practicum hours can be verified as meeting the requirements of this paragraph. The applicant must bear all expenses incurred during the procedure.

(10) An applicant must have obtained the equivalent of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in speech-language pathology as required by §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License).

(A) While pursuing this professional employment experience, the applicant shall be designated as an intern in speech-language pathology.

(B) Prior to the beginning of an intern's required, supervised professional experience, the intern must be licensed as required by §741.62 of this title.

(C) An applicant who completed an internship in another state must meet the requirements of §741.62 of this title except the supervisor must have been licensed in that other state, rather than Texas. However, if the other state did not require licensing, the supervisor must have

held the American Speech-Language-Hearing Association certificate of clinical competence in speech-language pathology.

(11) An applicant must pass the examination as referenced by §741.122 of this title (relating to Frequency) before a license will be issued.

§741.62. Requirements for an Intern in Speech-Language Pathology License.

(a) Effective January 1, 1994, an applicant who has completed the requirements of §741.61 (1)-(9) of this title (relating to Requirements for a Speech-Language Pathology License) must be licensed as an intern in order to commence the supervised professional experience.

(b) Effective January 1, 1994, an applicant who has successfully completed all academic and clinical requirements of §741.61(1)-(9) of this title but who has not had the degree officially conferred may be licensed as an intern in order to commence the supervised professional experience but must submit an original or certified copy of a letter from the program director verifying that the applicant has met all academic coursework, clinical practicum requirements and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred.

(c) The intern must complete 36 weeks of full-time supervised professional experience, or its part-time equivalent, in which bona fide clinical work has been accomplished in speech-language pathology. Full-time employment is defined as a minimum of 30 hours per week in direct patient/client contact, consultations, recordkeeping and administrative duties relevant to a bona fide program of clinical work. Part-time equivalent is defined as follows.

(1) 0-15 hours per week—no credit will be given.

(2) 15-19 hours per week for over 72 weeks.

(3) 20-24 hours per week for over 60 weeks, or

(4) 25-29 hours per week for over 48 weeks.

(d) If the supervisor of the intern and a committee of the board determines that the intern needs additional supervision in a specific area, the internship may be extended.

(e) This internship must begin within four years after the academic and clinical experience requirements as required by §741.61 of this title have been met and must be completed within a maximum period of 36 consecutive months once initi-

ated. Applicants who do not meet these times frames must request, in writing, and may receive board approval for an extension. A committee of the board will decide on a case-by-case basis and may require that the applicant complete additional coursework, earn continuing professional education hours or pass the examination referenced in §741.122 of this title (relating to Frequency).

(f) This work must be done under the supervision of an individual who holds a valid Texas license in speech-language pathology and who possesses a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders, completed the equivalent of 36 weeks of full-time supervised professional experience and passed the national examination as required by §741.122 of this title.

(g) Original or certified copy of the transcript(s) are required and will be evaluated under §741.61(9) of this title.

(h) An applicant whose master's degree is received at a college or university approved by the American Speech-Language-Hearing Association Educational Standards Board will receive automatic approval of the course work and clinical experience if the program director verifies that all requirements as outlined in §741.61 (1)-(9) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(i) The internship experience should be divided into three segments with no fewer than 36 clock hours of supervisory activities to include:

(1) 18 on-site observations of direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation, and rehabilitation;

(2) 18 other monitoring activities which may include correspondence, review of video tapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; and

(3) other options to complete this supervisory process must be requested in writing and receive approval from a committee of the board before commencing the activity.

(j) The internship should involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities.

(k) The supervisor periodically shall conduct a formal evaluation of the applicant's progress in the development of professional skills.

(l) An original or certified copy of the intern plan or an individual work plan signed by the supervisor and applicant must be submitted. The board office must be notified in writing of any change in the supervisory arrangement. If a major change in the plan occur, a revised plan must be submitted immediately.

(m) A supervisor of an intern is responsible for the services to the client that may be performed by the intern. The supervising professional must ensure that all services provided are in compliance with this chapter.

(n) A person who possesses a master's degree with a major in audiology and is pursuing an internship in speech-language pathology may apply for an intern license in speech-language pathology if the board has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the department head of the college or university stating that the individual has completed enough hours to establish a graduate-level major in speech-language pathology and would meet the academic and clinical requirements for a license as an audiologist.

(o) An intern license is issued and expires as described in §741.143 of this title (relating to Issuance of License).

§741.65. Requirements for a Provisional Speech-Language Pathology License.

(a) The board may grant a provisional license to a person if the following requirements are met:

(1) the person possesses a license in good standing as a speech-language pathologist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act;

(2) the person submits evidence of having passed the Educational Testing Service examination as reference in §741.122 of this title (relating to Frequency) or a state validated examination required for licensure in speech-language pathology, and

(3) the person submits a form signed by a person licensed as a speech-language pathologist under this Act who agrees to sponsor the applicant

(b) The board may excuse an applicant for a provisional license from the requirement of subsection (a)(3) of this section if he or she submits documentation to show that meeting this requirements would constitute a hardship

(c) Once issued, a provisional license is valid until the date the board approves or denies the provisional license-holder's application for a license

(d) The board shall issue a speech-language pathology license to the provisional license-holder if he or she submits the following:

(1) an original or certified copy of transcript(s) and other documentation showing that the provisional license-holder met all requirements referenced in §741.61 of this title (relating to Requirements for a Speech-Language Pathology License), and

(2) an original or certified copy of a passing score from the Educational Testing Service as referenced in §741.122 of this title

(e) The board must complete the processing of a provisional license-holder's application for a license not later than the 180th day after the date the provisional license is issued.

§741.66. Requirements for Registration as an Intern in Speech-Language Pathology.

(a) An applicant who possesses at least a master's degree with a major in speech-language pathology from an accredited or approved college or university must be registered as an intern before beginning the internship

(b) The internship is the equivalent of nine months of full-time, 40-hour weekly, supervised professional experience in which bona fide clinical work has been accomplished in speech-language pathology.

(c) While pursuing this professional employment experience, the applicant shall be designated as an intern in speech-language pathology

(d) This internship must begin within two years after the academic and clinical experience requirements have been met and must be completed within a maximum period of 36 consecutive months once initiated. Applicants who do not meet these time-frames must request, in writing, and receive committee approval for an extension.

(e) This work must be done under the supervision of an individual who holds a master's degree in speech-language pathology and a valid license to practice speech-language pathology in the State of Texas

(f) Prior to the beginning of an intern's required, supervised professional experience, the intern form must be filed with the executive secretary in the office of the board

(1) This document is to be completed and signed by the licensing supervising professional and must be updated every six months.

(2) Licensees who supervise interns are responsible for the services to the client that may be performed by the intern. The supervising professional must ensure that all services provided are in compliance with this chapter.

(3) Original or a certified copy of transcript(s) of the intern's college or university course work with verification of degree(s) awarded are required at the time of submission of the intern form.

(4) The board shall not consider an individual an intern until the intern form is approved. The office must be notified of any change in the supervisory arrangement and a new form must be filed.

(5) Until licensed, the intern must continue to be supervised if the intern is practicing speech-language pathology.

(6) Upon acceptance of the intern form, the executive secretary shall provide a letter of registration to be placed in the intern's personnel file.

(g) A person who possesses a master's degree with a major in audiology and is pursuing an internship in speech-language pathology may begin this nine month supervised professional experience in accordance with of this section, if the board has an original transcript showing completion of a master's degree with a major in audiology on file and a letter from the department head of the college or university stating that the individual has completed enough hours to establish a graduate-level major in speech-language pathology.

(h) A supervisor of an intern must show proof of having earned at least a master's degree with a major in speech-language pathology from an accredited college or university by submitting an original or photocopy of the transcript

(i) This section expires December 31, 1993.

Issued in Austin, Texas, on November 10, 1993.

TRD-9331829

Gene R Powers
Chairperson
State Board of Examiners
for Speech-Language
Pathology and
Audiology

Effective date. November 10, 1993

Expiration date. March 11, 1994

For further information, please call: (512) 834-6627

Subchapter E. Academic Requirements for Examination and Licensure for Audiologists

• 22 TAC §741.81

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.81. Purpose.

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 Chairperson
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 for Speech-Language
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 Audiology

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For further information, please call: (512) 834-6627

• 22 TAC §§741.81, 741.82, 741.85-741.87

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.81 *Requirements for an Audiology License* The purpose of this subchapter is to delineate the academic, practicum, supervised professional experience and examination required for licensure of an audiologist.

(1) An applicant must possess a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders from a program accredited by the American-Speech-Language-Hearing Association in an accredited or approved college or university.

(2) An applicant must have earned at least 75 semester credit hours that reflect a well integrated program of study.

(3) At least 27 of the 75 semester credit hours must be in basic science coursework which includes at least.

(A) six semester credit hours in the biological/physical sciences and mathematics;

(B) six semester credit hours in the behavioral and/or social sciences; and

(C) 15 semester credit hours in the basic human communication processes, to include coursework in each of the following three areas of speech, language, and hearing:

(i) the anatomic and physiologic bases;

(ii) the physical and psychophysical bases; and

(iii) the linguistic and psycholinguistic aspects.

(4) At least 36 of the 75 semester credit hours must be in professional course work acceptable toward a graduate degree with at least 30 semester credit hours awarded graduate credit.

(5) At least 24 semester credit hours acceptable toward a graduate degree must be earned in the area of audiology as follows:

(A) six graduate semester credit hours in hearing disorders and hearing evaluation,

(B) six graduate semester credit hours in habilitative/rehabilitative procedures with individuals who have hearing impairment, and

(C) other graduate semester credit hours in courses that include information on hearing disorders, hearing evaluations, and preventive methods, including the study of auditory disorders and habilitative/rehabilitative procedures across the life span.

(6) Six semester credit hours must be earned in the area of speech-language pathology as follows

(A) three semester credit hours in speech disorders; and

(B) three semester credit hours in language disorders;

(7) A maximum of six academic semester credit hours associated with clinical practicum and a maximum of six academic semester credit hours associated with a thesis or dissertation may be counted toward the 36 hours but not in lieu of the requirements of paragraphs (5) and (6) of this section.

(8) An applicant must have completed a minimum of 375 clock hours of clinical experience with individuals who present a variety of communication disorders under supervision of an individual who

holds a valid Texas license in audiology and who possesses a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders, completed the equivalent of 36 weeks of full-time supervised professional experience and passed the national examination as required by §741.122 of this title (relating to Frequency). This experience must have been obtained within an educational institution, or in one of its cooperating programs. Clinical experience may be referred to as clinical practicum.

(A) At least 25 clock hours of clinical observation must be completed prior to beginning the clinical practicum that concerns the evaluation and treatment of children and adults with disorders of speech, language, or hearing.

(B) At least 350 clock hours of supervised clinical practicum that concern the evaluation and treatment of children and adults with disorders of speech, language, and hearing must be completed as follows:

(i) no more than 25 of the clock hours may be obtained from participation in staffing in which evaluation, treatment, and/or recommendations are discussed or formulated, with or without the client present;

(ii) at least 250 clock hours must be completed in audiology as follows:

(I) at least 40 clock hours in evaluation of hearing in children;

(II) at least 40 clock hours in evaluation of hearing in adults;

(III) at least 80 clock hours in selection and use of amplification and assistive devices for children and adults;

(IV) at least 20 clock hours in treatment of hearing disorders in children and adults; and

(iii) At least 35 of the 350 clock hours must be in speech-language pathology as follows.

(I) at least 15 clock hours involved in the evaluation or screening of individuals with speech and language disorders unrelated to hearing impairment and

(II) at least 15 clock hours involved in the treatment of individu-

als with speech and language disorders unrelated to hearing impairment.

(C) While pursuing this course of study, the applicant shall be designated as a trainee in audiology.

(D) Supervised clinical practicum earned at foreign universities shall be acceptable if the applicant follows procedures outlined in paragraph (9)(G) of this section.

(9) Original transcripts shall be required to process an application for licensure. Certified copies of transcripts shall be considered originals. Transcripts shall be reviewed as follows.

(A) Graduate degrees must have been completed at a college or university which has a program accredited by the American Speech-Language-Hearing Association and holds accreditation or candidacy status from a recognized regional accrediting agency, such as the Southern Association of Colleges and Universities.

(B) The transcript must verify which courses received graduate credit

(C) Semester credit hours that are acceptable may include upper division hours.

(D) The board shall only accept course work completed with a grade of at least a "C" or for credit.

(E) The board shall consider a quarter hour of academic credit as two-thirds of a semester credit hour.

(F) Academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other official means.

(G) Degrees and/or course work received at foreign universities shall be acceptable only if such course work clinical practicum hours can be verified as meeting the requirements of this paragraph. The applicant must bear all expenses incurred during this procedure.

(10) An applicant must have obtained the equivalent of 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology as required by §741.82 of this title (relating to Requirements for an Intern in Audiology License).

(A) While pursuing this professional employment experience, the applicant shall be designated as an intern in audiology.

(B) Prior to the beginning of an intern's required, supervised professional experience, the intern must be licensed as required by §741.82 of this title.

(C) An applicant who completed an internship in another state must meet the requirements of §741.82 of this title, except the supervisor must have been licensed in that other state, rather than Texas. However, if the other state did not require licensing, the supervisor must have held the American Speech-Language-Hearing Association certificate of clinical competence in audiology.

(11) An applicant must pass the examination as referenced by §741.122 of this title before a license will be issued.

§741.82 Requirements for an Intern in Audiology License

(a) Effective January 1, 1994, an applicant who has completed the requirements of §741.81 (1)-(9) of this title (relating to Requirements for an Audiology License) must be licensed as an intern in order to commence the supervised professional experience.

(b) Effective January 1, 1994, an applicant who has successfully completed all academic and clinical requirements of §741.81 (1)-(9) of this title but who has not had the degree officially conferred may be licensed as an intern in order to commence the supervised professional experience but must submit an original or certified copy of a letter from the program director verifying that the applicant has met all academic coursework, clinical practicum requirements and completed a thesis or passed a comprehensive examination, if required, and is awaiting the date of next graduation for the degree to be conferred

(c) The intern must complete 36 weeks of full-time, or its part-time equivalent, of supervised professional experience in which bona fide clinical work has been accomplished in audiology. Full-time employment is defined as a minimum of 30 hours per week in direct patient/client contact, consultations, record keeping and administrative duties relevant to a bona fide program of clinical work. Part time equivalent is defined as follows.

(1) 0-15 hours per week--no credit will be given,

(2) 15-19 hours per week for over 72 weeks,

(3) 20-24 hours per week for over 60 weeks; or

(4) 25-29 hours per week for over 48 weeks.

(d) If the supervisor of the intern and a committee of the board determine that the intern needs additional supervision in a specific area, the internship may be extended.

(e) This internship must begin within four years after the academic and clinical experience requirements as required by §741.81 of this title have been met and must be completed within a maximum period of 36 consecutive months once initiated. Applicants who do not meet these times frames must request, in writing, and may receive board approval for an extension. A committee of the board will decide on a case-by-case basis and may require that the applicant complete additional coursework, earn continuing professional education hours or pass the examination referenced in §741.122 of this title (relating to Frequency).

(f) This work must be done under supervision of an individual who holds a valid Texas license in audiology and who possesses a minimum of a master's degree with a major in not less than one of the areas of communicative sciences or disorders, completed the equivalent of 36 weeks of full-time supervised professional experience and passed the national examination as required by §741.122 of this title. This experience must have been obtained within an educational institution, or in one of its cooperating programs. Clinical experience may be referred to as clinical practicum.

(g) Original or certified copy of the transcript(s) are required and will be evaluated under §741.81(9) of this title.

(h) An applicant whose master's degree is received at a college or university approved by the American Speech-Language-Hearing Association Educational Standards Board will receive automatic approval of the course work and clinical experience the program director verifies that all requirements as outlined in §741.81(1)-(9) of this title have been met and review of the transcript shows that the applicant has successfully completed at least 24 semester credit hours acceptable toward a graduate degree in the area of speech-language pathology with six hours in audiology.

(i) The internship experience should be divided into three segments with no fewer than 36 clock hours of supervisory activities to include.

(1) 18 on-site observations of direct client contact at the worksite in which the intern provides screening, evaluation, assessment, habilitation and rehabilitation;

(2) 18 other monitoring activities which may include correspondence, review of video tapes, evaluation of written reports, phone conferences with the intern, evaluations by professional colleagues; and

(3) other options to complete this supervisory process must be requested in writing and receive approval from a committee of the board before commencing the activity.

(j) The internship should involve primarily clinical activities such as assessment, diagnosis, evaluation, screening, treatment, report writing, family/client consultation, and/or counseling related to the management process of individuals who exhibit communication disabilities.

(k) The supervisor periodically shall conduct a formal evaluation of the applicant's progress in the development of professional skills.

(l) An original or certified copy of the intern plan or an individual work plan signed by the supervisor and applicant must be submitted. The board office must be notified in writing of any change in the supervisory arrangement. If a major change in the plan occur, a revised plan must be submitted immediately.

(m) A supervisor of an intern is responsible for the services to the client that may be performed by the intern. The supervising professional must ensure that all services provided are in compliance with this chapter.

(n) A person who possesses a master's degree with a major in speech-language pathology and is pursuing an internship in audiology may apply for an intern license in audiology if the board has an original transcript showing completion of a master's degree with a major in speech-language pathology on file and a letter from the department head of the college or university stating that the individual has completed enough hours to establish a graduate level major in audiology and would meet the academic and clinical requirements for a license as an audiologist.

(o) An intern license is issued and expires as described in §741.143 of this title (relating to Issuance of License) and may be renewed as described in §741.162 of this title (relating to General).

§741.85. Requirements for a Provisional Audiology License.

(a) The board may grant a provisional license to a person if the following requirements are met:

(1) possesses a license in good standing as an audiologist in another state, the District of Columbia, or a territory of the United States that has licensing require-

ments that are substantially equivalent to the requirements of the Act;

(2) submits evidence of having passed the Educational Testing Service examination as reference in §741.122 of this title (relating to Frequency) or a state validated examination required for licensure in audiology; and

(3) submits a form signed by a person licensed as an audiologist under this Act who agrees to sponsor the applicant.

(b) The board may excuse an applicant for a provisional license from the requirement of subsection (a)(3) of this section if he or she submits documentation to show that meeting this requirements would constitute a hardship.

(c) Once issued, a provisional license is valid until the date the board approves or denies the provisional license holder's application for a license.

(d) The board shall issue an audiology license to the provisional license holder if he or she submits the following:

(1) an original or certified copy of transcript(s) and other documentation showing that the provisional license holder met all requirements referenced in §741.81 of this title (relating to Requirements for an Audiology License); and

(2) an original or certified copy of a passing score from the Educational Testing Service as referenced in §741.122 of this title (relating to Frequency).

(e) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

§741.86. Requirements for Registration of an Audiologist and Intern in Audiology who Fit and Dispense Hearing Aids/Hearing Instruments.

(a) A licensed audiologist or an intern in audiology must register his or her intent to fit and dispense hearing aid/hearing instrument, on a form obtained from the board.

(b) An audiologist or intern in audiology must renew the registration annually.

(c) An audiologist or intern in audiology must notify the board if he or she no longer wishes to fit and dispense hearing aids.

(d) An audiologist or intern in audiology may not fit and dispense hearing aids if:

(1) the license has been placed in the inactive status; or

(2) the license was not renewed before the end of the 60-day grace period.

(e) After the expired or inactive license has been properly renewed, the audiologist or intern in audiology may renew his or her registration to fit and dispense hearing aids.

(f) An audiologist or intern in audiology must adhere to §741.41 of this title (relating to Code of Ethics).

(g) An audiologist or intern in audiology must comply with the following guidelines concerning a 30-day trial period on every hearing aid/hearing instrument purchase.

(1) All purchasers shall be informed of a 30-day trial period by written agreement. All charges and fees associated with such trial period shall be stated in this agreement which shall also include the name, address, and telephone number of the State Board of Examiners for Speech-Language Pathology and Audiology. The purchaser shall receive a copy of this agreement.

(2) Any purchaser of a hearing aid(s) shall be entitled to a refund of the purchase price advanced by purchaser for the hearing aids(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s) to the licensee in good working order within the 30-days trial period ending 30 days from the date of delivery. Should the order be canceled by purchaser prior to the delivery of the hearing aid(s), the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing aid(s) to the licensee.

(h) If audiometric testing is not conducted in a stationary acoustical enclosure, sound level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most recent American National Standards Institute "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing. A dBa equivalent level may be used to determine compliance.

(i) An audiologist or intern in audiology must comply with 21 Code of Federal Regulations, §801.420 and §801.421, federal Food and Drug Administration guidelines for fitting and dispensing hearing aids/hearing instruments.

§741.87. Requirements for Registration as an Intern in Audiology.

(a) An applicant who possesses at least a master's degree with a major in audiology from an accredited or approved college or university must be registered as an intern before beginning the internship.

(b) The internship is the equivalent of nine months of full-time, 40-hour weekly, supervised professional experience in which bona fide clinical work has been accomplished in audiology.

(c) While pursuing this professional employment experience, the applicant shall be designated as an intern in audiology.

(d) This internship must begin within two years after the academic and clinical experience requirements have been met and must be completed within a maximum period of 36 consecutive months once initiated. Applicants who do not meet these time frames must request, in writing, and receive committee approval for an extension.

(e) This work must be done under the supervision of an individual who holds a master's degree in audiology and a valid license to practice audiology in the State of Texas.

(f) Prior to the beginning of an intern's required, supervised professional experience, the intern form must be filed with the executive secretary in the office of the board.

(1) This document is to be completed and signed by the licensing supervising professional and must be updated every six months.

(2) Licensees who supervise interns are responsible for the services to the client that may be performed by the intern. The supervising professional must ensure that all services provided are in compliance with this chapter.

(3) Original or certified copy of transcript(s) of the intern's college or university course work with verification of degree(s) awarded are required at the time of submission of the intern form.

(4) The board shall not consider an individual an intern until the intern form is approved. The office must be notified of any change in the supervisory arrangement and a new form must be filed.

(5) Until licensed, the intern must continue to be supervised if the intern is practicing audiology.

(6) Upon acceptance of the intern form, the executive secretary shall provide a letter of registration to be placed in the intern's personnel file.

(g) A person who possesses a master's degree with a major in speech-language pathology and is pursuing an internship in audiology may begin this nine

month supervised professional experience in accordance with this section, if the board has an original transcript showing completion of a master's degree with a major in speech-language pathology on file and a letter from the department head of the college or university stating that the individual has completed enough hours to establish a graduate level major in audiology.

(h) A supervisor of an intern must show proof of having earned at least a master's degree with a major in audiology from an accredited college or university by submitting an original or photocopy of the transcript.

(i) This section expires December 31, 1993.

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Gene R. Powers
Chairperson
State Board of Examiners
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For further information, please call: (512) 834-6627



Subchapter F. Application Procedure

• 22 TAC §741.103

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.103. Required Application Materials.

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The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act

§741.103. Required Application Materials.

(a) An applicant applying for a speech-language pathology or audiology license under §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceeding, felony and misdemeanor convictions, educational background, practicum experience, supervised experience, and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant, and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title (relating to Processing Procedures),

(2) the nonrefundable application fee;

(3) an original or certified copy of transcript(s) of all relevant course work;

(4) an original or certified copy from the director or designee of the college or university training program verifying the applicant completed the clinical experience set out in §741.61(8) of this title or §741.81(8) of this title.

(5) a supervised post-graduate experience form which must contain the following information:

(A) the name of the applicant,

(B) the supervisor's name, address, degree, and licensure status;

(C) the name and address of the agency or organization where the experience was gained;

(D) the inclusive dates of the supervised experience and the total number of hours of supervised post-graduate practice;

(E) the number of hours of weekly face-to-face supervision provided for the applicant and the types of supervision used (direct, observation room, video tape, audio tape, review of records, etc.),

(F) the applicant's employment status during supervised experience, and

(G) the supervisor's signature;

(6) an original or certified statement from the Educational Testing Service showing a passing score on the examination described in §741.122 of this title (relating to Frequency); and

(7) three letters of reference supporting the applicant's request for licensure from individuals who are in the profession and can attest to the applicant's skills and professional standards.

(b) An applicant applying for an intern in speech-language pathology license under §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or an intern in audiology license under §741.82 of this title (relating to Requirements for an Intern in Audiology License) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience, and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license.

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable; and

(E) the dated and notarized signature of the applicant, and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee,

(3) an original or certified copy of transcript(s) of all relevant course work, and

(4) an original or certified copy from the director or designee of the college or university training program verifying the applicant completed the clinical experience set out in §741.61(8) of this title or §741.81(8) of this title.

(c) An applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence applying for licensure under §741.63 of this title (relating to Special Conditions for Licensure of Speech-Language Pathologists) or §741.83 of this title (relating to Special Conditions for Licensure of Audiologists) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience, and references,

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant, and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee; however, an applicant who holds the American Speech-Language-Hearing Association certificates of clinical competence in audiology and in speech-language pathology applying for dual licensure as a speech-language pathologist and audiologist must submit two application fees;

(3) an original or certified copy of a letter from the American Speech-Language-Hearing Association stating the applicant holds the certificate of clinical competence in the area in which the applicant has applied for license, however, an applicant who holds the American Speech-Language-Hearing Association certificate of clinical competence in audiology and in speech-language pathology applying for dual licensure as a speech-language pathologist and audiologist must submit an original or certified copy of a letter from the American Speech-Language-Hearing Association stating the applicant currently holds the certificate of clinical competence in speech-language pathology and in audiology; and

(4) an original or certified copy of transcript(s) of all relevant course work

(d) An applicant applying for a speech-language pathology or audiology provisional license under §741.65 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.85 of this title (relating to Requirements for a Provisional Audiology License) must submit the following

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience, and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them,

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license,

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant, and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee;

(3) a copy of the licensing law and rules from the state of the applicant's previous residence,

(4) a copy of the applicant's license from another state;

(5) an original form completed by that state's licensing board with board seal affixed which contains:

(A) name and social security number of the applicant;

(B) area of licensure,

(C) date license issued;

(D) date license expired;

(E) what licensure qualifications were met by the applicant;

(F) whether the applicant passed an examination required for state licensure and the name of the examination;

(G) whether the license had ever been revoked, cancelled, or suspended; and

(H) whether disciplinary proceedings were initiated;

(6) an original or certified statement from the Education Testing Service showing a passing score on the examination described in §741.122 of this title if no examination is listed under paragraph (5)(F) of this subsection,

(7) a form completed by the individual licensed by this board accepting sponsorship unless the board excused the applicant from this requirement because it would constitute a hardship to the applicant, and

(8) once documentation required in this subsection has been received and a provisional license issued, the provisional license holder must submit additional documentation as required by §741.65(d) of this title or §741.85(d) of this title in order to receive a full license.

(e) An applicant applying for an assistant in speech-language pathology license under §741.64 of this title (relating to Requirements for a Licensed Associate in

Speech-Language Pathology) or an assistant in audiology license under §741.85 of this title must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable,

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee;

(3) a supervisory responsibility statement form obtained from the board office which contains.

(A) the name, address, employer, area of licensure, and license number of the supervisor;

(B) the name, area of licensure, and employer of the associate,

(C) a statement that the supervisor is responsible for notifying the board office of any change in the supervisory arrangements; and

(D) the dated and notarized signature of the supervisor;

(4) an original or certified copy of transcript(s) of relevant course work; and

(5) three letters of reference supporting the applicant's request for licensure.

(f) An applicant applying for a speech-language pathology or audiology temporary certificate of registration under §741.142 of this title (relating to Temporary Certificate of Registration) must submit the following:

(1) an application form obtained from the board office which shall contain:

(A) specific information regarding personal data, employment and nature of professional practice, social security number, other state licenses and certifications held, disciplinary proceedings, felony and misdemeanor convictions, educational background, practicum experience, supervised experience, and references;

(B) a statement that the applicant has read the Act and the board rules and agrees to abide by them;

(C) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) the dated and notarized signature of the applicant; and

(F) notification that the applicant may be entitled to a full refund if the application is not processed within the periods of time as required by §741.182 of this title;

(2) the nonrefundable application fee;

(3) an original or certified copy of transcript(s) of all relevant course work,

(4) an original or certified copy from the director or designee of the college or university training program verifying the applicant completed the clinical experience set out in §741.61(8) of this title or §741.81(8) of this title.

(5) a original or certified copy of a supervised post-graduate experience form which must contain the following information:

(A) the name of the applicant;

(B) the supervisor's name, address, degree, and licensure status;

(C) the name and address of the agency or organization where the experience was gained;

(D) the inclusive dates of the supervised experience and the total number of hours of supervised post-graduate practice;

(E) the number of hours of weekly face-to-face supervision provided for the applicant and the types of supervision used (direct, observation room, video tape, audio tape, review of records, etc.);

(F) the applicant's employment status during supervised experience; and

(G) the supervisor's signature; and

(6) three letters of reference supporting the applicant's request for licensure.

(g) A licensed audiologist or licensed intern in audiology who wishes to fit and dispense hearing aids/hearing instruments under §741.86 of this title (relating to Requirements for Registration of an Audiologist and Intern in Audiology who Fit and Dispense Hearing Aid/Hearing Instruments) must submit the following:

(1) a registration form obtained from the board office which shall contain:

(A) the name, address, social security number, license number, expiration date of license, and signature of the licensee; and

(B) a statement that the audiologist or intern in audiology agrees to adhere to requirements of the Act and board rules and to comply with Title 21, Code of Federal Regulations, Chapter 1; and

(2) the nonrefundable registration fee.

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Gene R. Powers
Chairperson
State Board of Examiners
for Speech-Language
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For further information, please call (512) 834-6627

Subchapter H. Licensing • 22 TAC §741.143

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners

for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.143. Issuance of License.

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For further information, please call: (512) 834-6627

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.143. Issuance of License.

(a) The board shall send each applicant for a speech-language pathology or audiology license who met the requirements of §741.61 of this title (relating to Requirements for a Speech-Language Pathology License), §741.63 of this title (relating to Special Conditions for Licensure of Speech-Language Pathologists), §741.81 of this title (relating to Requirements for an Audiology License), or §741.83 of this title (relating to Special Conditions for Licensure of Audiologists) whose application has been approved, a form to complete and return with the nonrefundable initial license fee. This fee must be submitted to the executive secretary no later than 90 days following the date of the request or the application and approved will be voided.

(i) The initial license and the initial license fee shall be prorated according to the licensee's birth-month. Any applicant approved for license within three months of the applicant's birth-month shall pay the prorated amount plus one-year license fee. Any applicant approved for less than 12 months, but for more than three months, shall pay a fee prorated for only those months. The prorated fee and all licensee records are based on the month of approval through the last day of the birth-month. An applicant may not practice in the professional area in which he or she applied for a license until the initial license fee has been received by the board.

(2) Upon receiving an applicant's license form and initial license fee, the board shall issue the applicant:

(A) a license;

(B) a certificate; and

(C) an ID card;

(3) The license may be renewed as required by §741.162 of this title (relating to General).

(b) The board shall send each applicant for an intern license who met the requirements of §741.62 of this title (relating to Requirements for an Intern in Speech-Language Pathology License) or §741.82 of this title (relating to Requirements for an Intern in Audiology License) whose application has been approved, a form to complete and return with the nonrefundable initial license fee. Upon receipt of the license form and fee, the board shall issue a license that will expire one year from the issue date. The license may be renewed as required by §741.162 of this title (relating to General).

(c) The board shall send each applicant for a provisional license who met the requirements of §741.65 of this title (relating to Requirements for a Provisional Speech-Language Pathology License) or §741.85 of this title (relating to Requirements for a Provisional Audiology License) whose application has been approved, a nonrenewable provisional license which is valid until the date the board approves or denies the application for a full license. Within the 180 days from date of issuance of the provisional license, the board shall either send the provisional licensee:

(1) a speech-language pathology or audiology license issued under subsection (a) that may be renewed as required by §741.162 of this title; or

(2) a letter of proposed denial if proof of having met the requirements of §741.61 of this title (relating to Requirements for a Speech-Language Pathology License) or §741.81 of this title (relating to Requirements for an Audiology License) and §741.122 of this title (relating to Frequency) have not been received and accepted by the board.

(d) The board shall send each applicant for an assistant license who met the requirements of §741.64 of this title (relating to Requirements for a Licensed Associate in Speech-Language Pathology) or §741.84 of this title (relating to Requirements for a Licensed Associate in Audiology) whose application has been approved, a form to complete and return with the nonrefundable initial license fee.

(1) The initial license and the initial license fee shall be prorated according to the licensee's birth-month. Any ap-

plicant approved for license within three months of the applicant's birth-month shall pay the prorated amount plus one-year license fee. Any applicant approved for less than 12 months, but for more than three months, shall pay a fee prorated for only those months. The prorated fee and all licensee records are based on the month of approval through the last day of the birth-month.

(2) Upon the applicant meeting the requirements set out in subsection (d) of this section and upon receiving an applicant's license form and fee, the board shall issue the applicant a license.

(3) The license may be renewed as required by §741.162 of this title.

(e) The board shall send each applicant for a temporary certificate of registration who met the requirements of §741.142 of this title (relating to Temporary Certificate of Registration) whose application has been approved, a nonrenewable certificate of registration which is valid for a period ending eight weeks after the next scheduled examination as required by §741.122 of this title.

(f) The board shall send each audiologist or intern in audiology licensed under this Act who met the requirements of §741.86 of this title (relating to Requirements for Registration of an Audiologist and Intern in Audiology who Fit and Dispense Hearing Aids/Hearing Instruments) whose form to register his or her intent to fit and dispense hearing aids has been accepted and the nonrefundable registration fee has been paid, a certificate of registration. This registration is valid from date of issue through the last day of the licensee's birth-month. This registration may be renewed as required by §741.162 of this title.

(g) Any license, certificate or registration issued by the board remains the property of the board.

(h) An application may be denied if the applicant's license to practice speech-language pathology or audiology in another state or jurisdiction has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons relating to the applicant's professional competence or conduct which could adversely affect the health and welfare of a client.

(i) The board is not responsible for lost, misdirected, or undelivered correspondence, including forms and fees, if sent to the address last reported to the board.

(j) Upon written request from the licensee and payment of the duplicate fee, a duplicate license, certificate, or registration may be obtained from the board.

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For further information, please call: (512) 834-6627

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Subchapter I. License Renewal
• 22 TAC §741.162

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.162. General.

(a)-(l) (No change.)

(m) An audiologist or intern in audiology registered to fit and dispense hearing aids/hearing instruments must renew the registration at the time the license is renewed.

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**Subchapter J. Fees and Late
Renewal Penalties**

• 22 TAC §741.181

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

**§741.181. Schedule of Fees and Late
Renewal Penalties.**

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For further information, please call: (512) 834-6627

◆ ◆ ◆
The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512j, §5, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules consistent with Article 4512j, and as necessary to administer and enforce the Act.

§741.181. Schedule of Fees. The purpose of this section is to establish a schedule of fees to provide the funds to support the activities of the board.

(1) The schedule of fees and is as follows:

- (A) application fee—\$35;
 - (B) provisional license fee—\$35;
 - (C) temporary certificate of registration fee—\$35;
 - (D) registration fee for audiologist and intern in audiology who fit and dispense hearing aids—\$10;
 - (E) initial license fee (prorated)—\$35;
 - (F) initial dual license as a speech-language pathologist and audiologist fee (prorated)—\$55;
 - (G) license renewal fee—\$35;
 - (H) dual license as a speech-language pathologist and audiologist renewal fee—\$55;
 - (I) duplicate license, certificate, or registration fee—\$10;
 - (J) inactive fee—\$35;
 - (K) late-renewal penalty fee—an amount equal to the renewal fee(s), with a maximum of two renewal fees, plus the examination fee; and
 - (L) examination fee—the amount charged by the department's designee administering the examination.
- (2) Any licensee attaining the age of 65 years shall have their license

renewal fee waived, but if renewed after the expiration of the 60-day grace period, the late-renewal penalty fee will be assessed.

(3) Fees paid to the board are nonrefundable.

(4) Any remittance submitted to the board in payment of a required fee must be in the form of a personal check, certified check, or money order unless this section requires otherwise. Checks from foreign financial institutions are not acceptable.

(5) An applicant whose check for the application fee is returned marked insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the board a money order or check for guaranteed funds within 30 days of the date of the receipt of

the board's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(6) An approved applicant whose check for the initial license fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's notice. Otherwise, the application and the approval shall be invalid.

(7) A licensee whose check for the renewal fee is returned marked insufficient funds, account closed, or payment stopped shall remit to the board a money order or check for guaranteed funds within 30 days of the date of receipt of the board's

notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be invalid. If the guaranteed funds are received after expiration of the 60-day grace period, a late-renewal penalty fee will be assessed.

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For further information, please call: (512) 834-6627

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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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) re-propose new §3.91, concerning the application of a state bank to establish a branch bank pursuant to Texas Civil Statutes, Article 342-903. A prior proposed version of §3.91, published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5947), is being withdrawn in this issue. The new proposal is based on the most recent prior proposal with substantive changes sufficient to require re-publication for comment.

Article XVI, §16(c), of the Texas Constitution provides that a state bank "has the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." Pursuant to Texas Civil Statutes, Article 342-113(4), the Commission is charged with promulgating rules to "permit state banks to transact their affairs in any manner ... which they could do ... were they organized and operating as a National bank under the laws of the United States...." The intent of these provisions is to preserve competitive parity between state and national banks.

In 1991, Texas Civil Statutes, Article 342-903 was greatly liberalized to permit state banks to branch virtually at will upon the prior written approval of the Commissioner, limited only to the condition that the Commissioner not have "any significant supervisory or regulatory concerns." Acts 1991, 72nd Legislature, Chapter 515, §2. At present, bank branching in Texas is governed solely by the statute; prior §3.91, implementing Article 342-903 as it existed before the 1991 amendments, was repealed effective September 21, 1993, published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5976).

The section as proposed permits but does not require the Commissioner to hold a hearing in the event valid and substantive reasons exist why the written submissions of the applicant and any protestants are inadequate to fully

develop the possibility of supervisory or regulatory concerns which, in the final analysis, is a purely discretionary decision of the Commissioner. Hearings, if granted, will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, to the extent feasible and not in conflict with Article XVI, §16(c), of the Texas Constitution. The new section also defines with specificity the concept of "significant supervisory or regulatory concerns" to provide applicants, commenters, and protestants alike with fair notice of the requirements of the Commissioner and the basis of branching decisions. As revised, the proposal provides that an application will ordinarily be denied if the applicant is in less than satisfactory financial condition as of its most recent examination or has a less than satisfactory rating regarding compliance with the Community Reinvestment Act, 12 United States Code, §2901 et seq. The revised proposal further explicitly protects confidential records of the Texas Department of Banking and the confidential portions of a branching application as provided by Texas Civil Statutes, Article 342-210.

All comments received regarding the prior proposal were generally in support of the proposed section. One commenter urged consideration of certain requests for clarification and certain technical observations in finalizing the regulation. Those comments and the Department's responses are considered in the paragraphs which follow.

First, the commenter observes that the definition of a branch does not identify a night depository, which this agency has on prior occasions considered to be a branch. The commenter agrees that a night depository is a branch, but urges that it be considered in the same category as an unmanned teller machine.

The Department concurs that night depositories have indeed been treated as branches in the past, but do not present the same concerns or degree of concerns as presented by other forms of branch facilities, including unmanned teller machines. Accordingly, the definition of a branch is modified in the new proposal to exclude a night depository to the same extent as an unmanned teller machine.

Second, the commenter respectfully suggests that a specific timeframe within which the Commissioner must act on an application be established, and proposes a period of 30 to 90 days as an adequate period of time, subject to extension for good cause. The commenter further notes that the Department of Banking can delay consideration of an ap-

plication indefinitely based upon whether the application is deemed complete and accepted for filing.

The Department agrees that a specific timeframe should be established within which the Commissioner is required to act on an application, subject to extension for good cause and provided no hearing will be held. The proposed regulation has been modified to include a requirement that the Department make a recommendation to the Commissioner within 30 days of the expiration of the time available for comment, protest, response, or reply, whichever is the last to occur, subject to an extension for good cause. The Commissioner must approve or deny an application within 30 days after the Department makes its recommendation, subject to extension for good cause. However, if a hearing is granted, the Department believes that specific timeframes are inappropriate given the unpredictable degree of difficulty in preparing and evaluating a proposal for decision. The section has been modified to require a prompt hearing, in the event a hearing will be held, in an effort to partially meet the commenter's concerns. Finally, an application that is not complete to the satisfaction of the Department within 60 days of the initial attempted filing shall be deemed withdrawn without prejudice to re-filing. In a further effort to speed the process, the requirement for publication of public notice has been revised to permit publication at the same time as the initial application is submitted to the Department.

Third, the commenter points out the inconsistency between the branch closing aspects of the proposed rule and applicable federal law and regulations. To avoid confusion and unnecessary duplication, the commenter suggests either modifying the proposed section to conform with federal regulations in this respect or simply omit the provision to defer to federal law, coupled with a requirement that the Commissioner receive a copy of the notice provided to the federal banking regulator.

The Department acknowledges the unintended inconsistency of the prior proposed section with requirements of federal law regarding branch closings, and has modified the proposal to defer to federal law, provided the Commissioner receives a copy of the branch closing notice provided to the federal banking regulator.

Fourth, the commenter urges that consideration be given to mobile branches, and notes that the proposed section is silent on the point. According to the commenter, mobile

branches have already been approved in Texas.

The Department agrees that mobile branches are permissible in Texas. Although the regulation is silent on the point, the Department believes that the regulation does not prohibit application for and approval under appropriate circumstances of a mobile branch. Accordingly, no changes to the regulation are appropriate.

Finally, subsection (a) of the proposal has been revised to be consistent with new proposed §3.92, regarding the permissible naming and advertising of a branch facility, and former section (g)(3)(H), regarding the Commissioner's consideration of security measures at a proposed branch, has been deleted. Security measures are more appropriately the province of the Federal Deposit Insurance Corporation and the bank's bonding company.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the section as proposed will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this 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 or administering this section is the enhancement of competitive equality of state banks to national banks. There will be no effect on small businesses. No economic cost will result to persons as a result of complying with the proposed section.

Comments on the proposal to be considered by the Commission and the Commissioner must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-113(4), which provides the Commission with the authority to promulgate general rules and regulations to permit state banks to transact their affairs in any manner which they could do were they organized and operating as national banks, and under Texas Civil Statutes, Article 342-903, §1(c) and §2(b), which empower the Commissioner to promulgate standards and procedures for branch applications.

The following are the articles and sections that are affected by the proposed new §3.91:

Texas Constitution Article XVI, §16; Texas Civil Statutes, Article 342-903; adopted 7 TAC §3.37 as published in this issue of the *Texas Register*, and proposed 7 TAC §3.92 as published in this issue of the *Texas Register*.

§3.91. Establishment and Closing of a Branch Facility.

(a) Definition of Branch. For purposes of this section, a "branch" is any location away from a state bank's principal

banking house at which the bank receives deposits, pays checks, or lends money, including a drive-in facility located more than 1,000 feet from the nearest wall of the principal banking house or any branch office of the bank, but not including a night depository, an unmanned teller machine subject to Texas Civil Statutes, Article 342-903a, a loan production office operated in compliance with §3.93 of this title (relating to Loan Production offices), or a state or federally licensed armored car service or other courier service transporting items for deposit or payment unless the risk of loss of items in the custody of such service is borne by the employing bank, or unless the items are deemed to be in customer accounts at the employing bank and insured by the Federal Deposit Insurance Corporation. The purpose of the Banking Commissioner (the Commissioner) in promulgating this definition is to ensure that significant banking functions are made available to the public only through authorized facilities, and it should be liberally construed to effectuate that purpose.

(b) Forms. A state bank that desires to operate a branch shall complete and file a branch application on forms promulgated by the Texas Department of Banking (the Department). Application forms and instructions are available from the Department on request.

(c) Filing. The Department will advise the applicant when a branch application has been reviewed and found to be complete. If the application is reviewed and found to be incomplete, the Department will advise the applicant as to what further information must be furnished before the application will be complete and accepted for filing. The Department will accept a branch application for filing after it has determined that the application is complete and accompanied by the proper application fee as set forth in §3.37(b) of this title (relating to Application Fees and Cost Deposits). An application that is not complete to the satisfaction of the Department within 60 days of the initial attempted filing shall be deemed withdrawn, notwithstanding prior publication of the public notice pursuant to subsection (e) of this section, without prejudice to refiling.

(d) Investigative Costs. The Department may investigate facts in connection with any application. Costs incurred in any investigation deemed appropriate by the Department shall be paid by the applicant as set forth in §3.37(f) of this title.

(e) Public Notice.

(1) Simultaneously with or within a reasonable period of time following initial submission of its application, the applicant shall publish notice of the application, together with the statement set forth in

paragraph (2) of this subsection, in a newspaper of general circulation in the community where the proposed branch is to be located. The applicant will furnish the Department with a copy of the notice and a publisher's affidavit attesting to the date of its publication.

(2) The notice shall state the fact of the application, the proposed location of the branch, and substantially the following text as a separately stated paragraph:

"Any person wishing to comment on this application, either for or against, may file written comments with the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 within 14 days of the date of this publication. Such comments will be made a part of the record before and considered by the Banking Commissioner. Any person wishing to formally protest and oppose the proposed branch and participate in the application process may do so by filing a written notice of protest with the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 within 14 days of the date of this publication, together with a filing fee of \$2,500. The protest fee may be reduced or waived by the Banking Commissioner upon a showing of substantial hardship."

(f) Public Comment and Protest. For a period of 14 days after publication of notice or such longer period as the Commissioner may allow for good cause shown, the public may submit written comments or protests regarding the application. Persons submitting comments will not be entitled to further notice of or participation in the branch application proceedings but all comments submitted will be considered by the Commissioner. Each protestant will have the rights and responsibilities set forth in subsections (h) and (i) of this section.

(g) Criteria for branch approval: "Significant supervisory or regulatory concerns."

(1) In concluding whether the Commissioner has any significant supervisory concerns regarding a proposed branch, the Commissioner will consider the financial condition of the applicant, the financial effect of the branch on the applicant, the management abilities of the applicant, and the history and prospects of the applicant and its affiliates regarding fulfillment of responsibilities to regulatory agencies and to the public, including, but not limited to, the responsibility of the applicant to meet the credit needs of its entire community pursuant to the Community Reinvestment Act (CRA), 12 United States Code, §2901 et seq. An application will ordinarily be denied if the applicant is in less than satisfactory financial condition as of its most recent examination or has a less than satis-

factory rating regarding compliance with CRA.

(2) In concluding whether the Commissioner has any significant regulatory concerns regarding a proposed branch, the Commissioner will consider the need to maintain a sound banking system and will follow the principles that the marketplace normally is the best regulator of economic activity, and that competition promotes a sound and more efficient banking system that serves customers well. Accordingly, absent significant supervisory concerns, the general policy of the Commissioner is to approve applications to establish and operate branches, provided that approval would not otherwise violate the provisions of federal or state law (including any requirements for federal banking agency approval).

(3) In evaluating whether the Commissioner should have any significant supervisory or regulatory concerns as set forth in paragraphs (1) and (2) of this subsection, the Commissioner will consider written material in the record, including the application, comments on file, protests on file, and any replies of the applicant, the Department's files as they relate to the current financial condition of the applicant, and any data that the Commissioner may properly officially notice. Specifically, the Commissioner will consider but not be limited to the following:

(A) the Department's files as they relate to the current financial condition of the applicant, including, but not limited to, its capital, asset quality, management, earnings and liquidity (These files are confidential pursuant to Texas Civil Statutes, Article 342-210 and are not open or available to either the applicant or a protestant in the absence of a court order.);

(B) costs of establishing the proposed branch office, including costs of purchasing or leasing the branch site, necessary furnishings, staffing and equipment and effect of these costs on the operations of the applicant as a whole;

(C) whether projected earnings appear reasonable and sufficient to support expenses attributable to the branch without jeopardizing the safety and soundness of the applicant;

(D) depth and quality of management of the applicant and the proposed branch;

(E) compliance with the CRA as determined by the rating assigned in the applicant's most recent CRA evaluation;

(F) the applicant's responsiveness to recommendations made in past state and federal bank examination reports and whether the applicant has generally been operated in substantial compliance with all applicable state and federal laws; and

(G) whether the proposed branch name clearly complies with Texas Civil Statutes, Article 342-917 and §3.92 of this title (relating to Naming and Advertising of Branch Facilities).

(4) The Commissioner will direct the Department to assemble, evaluate, and make a recommendation regarding all relevant documentation and data as set forth in this subsection within 30 days after the expiration of the period for filing a comment, protest, response or reply, whichever is the last to occur; provided, however, that if a hearing is granted pursuant to subsection (i) of this section, the Commissioner will request the Department's hearing officer (Hearing Officer) to discharge this function through the hearings process. Portions of the record so assembled that are confidential pursuant to Texas Civil Statutes, Article 342-210 shall be segregated and clearly marked as confidential.

(5) The Commissioner shall either grant or deny the application within 30 days after receipt of the Department's recommendation in the event no hearing is to be held.

(h) Protest.

(1) A protest may be initiated by notifying the Department in writing of the intent to protest the application within the time period allowed by subsection (f) of this section, accompanied by the filing fee as set forth in §3.37(d) of this title. If the protest is untimely, the filing fee will be returned to the protestant. If the protest is timely, the Department will notify the applicant of the protest and mail or deliver a complete copy of the non-confidential sections of the application to the protestant within 14 days after receipt of the protest.

(2) The protestant shall file a detailed protest responding to each substantive statement contained in the non-confidential sections of the application within 20 days after receipt of the application. The protestant's response shall indicate with regard to each such statement whether it is admitted or denied. The applicant shall file a written reply to the detailed response within ten days after the response is filed. Both the detailed response and the reply thereto shall be verified by affidavit and shall contain a certificate of service on the opposing party. When applicable, statements in the response and in the reply may

be supported by references to data available in sources of which official notice may properly be taken. Comments received by the Department and any replies of the applicant to such comments will also be made available to the protestant.

(3) The Commissioner may extend any time period set forth in this subsection for good cause shown. Good cause includes, but is not limited to, failure of the Department to furnish required documentation, forms or information within a reasonable time to permit its effective use by the recipient, or failure of a party to timely serve a filed document on an opposing party. The filing date is the date the document is actually received by the Department and not the date of mailing. Failure to timely file a required document shall be deemed a withdrawal of the application or protest, as applicable.

(i) Hearing.

(1) Pursuant to Texas Civil Statutes, Article 342-903 and Texas Constitution Article XVI, §16(c), the Commissioner may not be compelled to hold a hearing prior to granting or denying approval to establish a branch.

(2) However, in the exercise of discretion, the Commissioner will consider granting a hearing on a branch application at the request of either the applicant or a protestant. The Commissioner may order a hearing even if no hearing has been requested by the parties. Any party requesting a hearing must indicate with specificity what issues are involved that cannot be determined on the basis of the record compiled pursuant to subsection (g) of this section and why the issues cannot be so determined. The request for hearing and the Commissioner's decision with regard to granting a hearing will be made a part of the record.

(3) If a hearing is not requested or if a request for hearing is denied, the Commissioner will consider the application in the manner set forth in and solely on the basis of the written record established pursuant to subsection (g) of this section.

(4) If a hearing is granted, the Commissioner will instruct the Hearing Officer to enter appropriate order(s) and conduct the hearing within 30 days after the date the hearing was granted, or as soon thereafter as is reasonably possible, under the Administrative Procedure Act, Texas Government Code, Chapter 2001, to the extent feasible and not in conflict with Texas Constitution Article XVI, §16(c). Issues will be limited to those on which testimony is absolutely necessary, and the Hearing Officer may require testimony to be submitted in written form and prefiled. No evidence will be received on matters that are not in dispute. No issues or evi-

dence will be considered that are not relevant to the standards set forth in subsection (g) of this section or that are not supported by the application, response, or reply.

(5) Preparation of a proposal for decision, exceptions and replies to such proposal for decision, the final decision of the Commissioner, and motions for rehearing shall be governed by §§13.101-13.106 of this title (relating to Practice and Procedure).

(j) Beginning Operations. Any branch approved pursuant to this section must begin operations within 18 months from the date of approval unless the Commissioner extends that date in writing. Approval will automatically expire 18 months from the date of approval if no extension is granted.

(k) Emergency Branches. The procedures set forth in subsections (e), (f), (h), and (i) of this section do not apply to branch applications made as a part of a transaction for the purpose of assuming all or a portion of the assets and liabilities of any financial institution deemed by the Commissioner to be in an unsafe condition.

(l) Branch Relocation. A bank may, with prior written approval of the Commissioner, relocate an approved branch to a location within the community served by the branch. The extent of the community served by the branch shall be determined by the commissioner in the exercise of discretion. The procedures outlined in this section for approval of branches shall not apply to the relocation of an approved branch. The bank shall file an application to relocate a branch accompanied by the required application fee pursuant to §3.37 of this title.

(m) Closing a Branch. Before closing an approved branch, a bank shall comply with the notice requirements of federal law, and shall provide the Department with a copy of the branch closing notice filed with the appropriate federal banking regulator simultaneously with its filing. Once the branch has been closed, the bank cannot thereafter reopen the branch except upon application for a new branch in compliance with this section.

(n) Parity provision. This section should be liberally interpreted to allow state banks to branch to the same extent as national banks. See Texas Constitution Article XVI, §16(c); Texas Civil Statutes, Article 342-113(4).

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 November 8, 1993.

TRD-9331737
Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: January 14, 1994

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

◆ ◆ ◆
• 7 TAC §3.92

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

The Finance Commission of Texas (the Commission) proposes the repeal of §3.92, concerning identification of bank facilities, to be replaced by proposed new 7 TAC §3.92, published for comment in this issue of the *Texas Register*.

Repeal of existing §3.92 is necessary to prevent inconsistent rules regarding the naming and advertising of bank branch facilities. Existing §3.92 contains several ambiguities that have made enforcement of its provisions difficult. The proposed new §3.92 is intended to eliminate these ambiguities.

Everette D. Jobe, general counsel, Texas Department of Banking, 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. Jobe also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is the elimination of ambiguous and inconsistent regulations regarding the naming and advertising of bank branch facilities. 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 proposed repeal to be considered by the Commissioner and the Commission must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeal is proposed under Texas Civil Statutes, Article 342-103(A)(1), which provide the Commission with the authority to adopt rules and determine general policies for the regulation of state banks, and Article 342-903(1)(c), which provides the Commission with the authority to adopt standards for the approval of branch offices.

The following are the articles and sections that are affected by the proposed repeal of existing §3.92:

Texas Civil Statutes, Articles 342-903 and 342-927, and proposed new §3.92, proposed in this issue of the *Texas Register*.

§3.92. Identification of Bank Facilities.

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 November 8, 1993.

TRD-9331744
Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: January 14, 1994

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

◆ ◆ ◆
The Finance Commission of Texas (the Commission) proposes new §3.92, concerning the naming and advertising of bank branch facilities pursuant to Texas Civil Statutes, Article 342-917. Existing §3.92 is proposed for repeal in this issue of the *Texas Register*.

Article 342-917 generally provides that a bank may not use any form of advertising that implies or tends to imply that a branch facility is a separate bank. In the enabling legislation, effective August 28, 1989, banks were given until June 1, 1990, to comply with the new statutory mandate, subject to a six-month hardship extension that could be granted by the Commission. To clarify specific applications of Article 342-917, the Commission adopted existing §3.92 in early 1989. Unfortunately, existing §3.92 contains several ambiguities that have made enforcement of its provisions difficult. The proposed new §3.92 is intended to eliminate these ambiguities.

While the Commission prefers to leave as much as possible to the marketplace and believes competition is healthy and ultimately good for Texas consumers of banking services, an important and substantive purpose is served in regulating identification of branch facilities. Depositors could exceed the limits of Federal Deposit Insurance Corporation insurance coverage by unintentionally depositing excess amounts in two branches of the same bank which they perceive to be different banks. Regulation of branch identification will sometimes conflict with the understandable desire of a bank to identify with the community in which a branch facility is located by naming the facility after that community combined with the term "bank" or by retaining the name of a merged bank as the branch name.

The new section as proposed generally prohibits advertising of a branch facility in a manner that implies, tends to imply, or tends to foster a perception that the branch facility is a separate bank, and provides specific guidance in certain situations identified as misleading. The full bank name must be prominently featured and, in some instances, must be accompanied by the city of the principal banking house. Except in instances where the bank name is a unique and widely

recognized tradename, separate identification of a branch facility is required. The proposed section will provide a "safe harbor" by specifying the comparative sizes and proportionality of public displays of the bank name and the branch name and the manner in which the bank name and the branch name may be used on form documentation.

The proposal also contains a provision giving banks three months after the effective date to comply with its requirements, subject to a six-month hardship extension that could be granted by the Banking Commissioner. While the statutory grace period for compliance expired in 1990, the Commission believes that a further grace period is appropriate to avoid adverse impacts on banks that were unaware of these requirements because of previous difficulties and laxity in enforcement.

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 is the prevention of loss to depositors due to lack of deposit insurance in those situations where a depositor of more than \$100,000, spread among two or more facilities of the same bank, mistakenly believes the deposits to be in separate banks. 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 to be considered by the Commission and the Commissioner must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294. In particular, the Commission requests commenters to address whether the use of the term "bank" in the name of a branch facility should be prohibited, as is the case in the proposed section, and, if not, what restrictions should be imposed on the use of the term "bank" to prevent the name of a branch facility from implying or tending to imply that the branch is a separate bank.

The new section is proposed under Texas Civil Statutes, Article 342-103(A) (1), which provide the Commission with the authority to adopt rules and determine general policies for the regulation of state banks, and Article 342-903(1)(c), which provides the Commission with the authority to adopt additional standards for the approval of branch offices.

The following are the articles and sections that are affected by the proposed new §3.92:

Texas Civil Statutes, Articles 342-903 and 342-917, and existing §3.92, proposed for repeal in this issue of the *Texas Register*.

§3.92. Naming and Advertising of Branch Facilities.

(a) Authority. The requirements set forth in this section are adopted by the

Finance Commission pursuant to authority granted in Texas Civil Statutes, Articles 342-103(A)(1) and 342-903(1)(c).

(b) Purpose. The purpose of this section is to establish standards for naming and truthful advertising of bank branch facilities, and to prohibit advertising of a branch facility in a manner that implies or tends to imply the branch facility is a separate bank. The confusion resulting from such misleading names or advertising may cause depositors to exceed the limits of Federal Deposit Insurance Corporation insurance coverage by unintentionally depositing excess amounts in two branches of the same bank which they perceive to be different banks.

(c) General Prohibition on Misleading Advertising. Notwithstanding any other provision in this section, a state bank shall not use any advertising or representation, including, but not limited to any sign, print advertisement or statement, electronic media broadcast advertisement or statement, official bank documentation, or any other representation, which implies, tends to imply, or tends to foster a belief that a branch facility is a separately chartered or organized bank.

(d) Signage. Any sign displayed to direct attention to a branch facility must contain the full name of the principal bank, together with the city of its principal banking house in certain circumstances as specified in this subsection, above or followed by a separate identifying name or phrase for the branch facility. The separate identifying name or phrase for a branch facility may not contain the word "bank." A principal bank with a common or generic name (e.g., "First State Bank") shall also disclose the city of its principal banking house as part of the name of the principal bank. Notwithstanding the foregoing, if the name of the principal bank is a unique tradename, widely recognized by consumers of bank services in the community in which the branch facility is located as representing the principal bank, a separate identifying name or phrase for the branch facility or display of the city of its principal banking house shall not be required. The style and size of font used for the separate name of the branch facility or manner in which such name is displayed shall be less prominent than the font used for the name of the principal bank or manner in which the principal bank name is displayed.

(e) Official Bank Documents. Each official bank document used by a branch facility, including but not limited to an item of stationery, checks, cashier's checks, loan applications, and certificates of deposit, must bear the full name of the principal bank if reference is made in such document to the separate name of the branch facility. The style and size of font used for the

separate name of the branch facility in an official bank document or manner in which such name is displayed may not be more prominent in style and size than the font used for the name of the principal bank or manner in which the principal bank name is displayed.

(f) Effective date. This section shall become effective immediately; however, institutions which on the effective date of this section have signs or documents which do not comply with this section shall have three months from the effective date to comply, and may be granted a further extension not to exceed an additional six months if the Banking Commissioner determines, on the basis of a written application with supporting documentation, that an extension is necessary to prevent undue hardship.

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 November 8, 1993.

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Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: January 14, 1994

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

Part II. Banking Department of Texas Chapter 10. Trust Companies

• 7 TAC §10.10, §10.11

The Finance Commission of Texas (the Commission) proposes new §10.10, and §10.11, concerning trust companies. Section 10.10 is being proposed to establish the requirements necessary for a trust company to apply for and maintain an exemption under Article 342-1103. The Commission also proposes new §10.11 to prescribe the procedures the Commissioner shall follow to revoke the exemption of a trust company.

The Banking Code, Article 342-1103, §6, authorizes the Commissioner of Banking of the State of Texas (the Commissioner) to "grant an exemption if the Commissioner finds a trust company does not transact business with the general public." Pursuant to Texas Civil Statutes, Article 342-1106, the Commission is charged with promulgating general rules and regulations "as may be necessary to accomplish the purposes" of Chapter Eleven-regulating trust companies.

As proposed, §10.10 sets out procedures for trust companies to apply for an exemption. The rule also establishes requirements to maintain exempt status including submitting to verification examinations, filing annual certifications, and refraining from doing business with the public.

As proposed, §10.11 will allow the Commissioner to revoke the exemption of a trust company on a finding that the trust company is transacting business with the general public; has transacted business with the general public during the exemption period; or has failed to comply with one of the administrative requirements set out in Texas Civil Statutes, Article 343-1103 or §10.10, as proposed. This new rule will also give the Commissioner immediate authority to pursue statutory remedies against a trust company that has lost exempt status, including supervision or conservatorship; referral to the Attorney General for forfeiture of the trust company charter; or removal of key trust company officials.

Sammie Glasco, assistant general counsel, Texas Department of Banking, 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. Glasco 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 is the protection of the general public. No economic cost will result to entities as a result of complying with the proposed section except a small fee to apply for an exemption.

Comments on the proposal to be considered by the Commission must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Sammie Glasco, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-1106, which provide the Commission with the authority to promulgate general rules and regulations as may be necessary to accomplish the purposes of Chapter Eleven for regulation of trust companies.

The following are the articles and sections that are affected by the proposed new §10.10 and §10.11: Texas Revised Statutes, Articles 342-1101 to 342-1113 (Chapter Eleven-Trust Companies).

§10.10. Requirements to Apply for and Maintain Status as Exempt Trust Company.

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

(1) Act-Texas Civil Statutes, Article 342-1101 et seq.

(2) Change of Control-After acquisition or change, the acquiring party or entity owns or possesses the power to vote 25% or more of the voting securities of the exempt trust company, or has the ability to control in any manner the election of a majority of the board of directors of the exempt trust company.

(3) Commissioner-The Banking Commissioner of Texas.

(4) Control-To own or possess the power to vote 25% or more of the voting securities of the exempt trust company or to have the ability to control in any manner the election of a majority of the board of directors of the exempt trust company.

(5) Department-The Texas Department of Banking.

(6) Direct family member-Any person who is related within the second degree of affinity or consanguinity to a person who controls an exempt trust company.

(7) Examination-The process of verifying the annual certification of exempt status under the Act, either by a field examination or an internal Department review of exempt trust company records and reports in lieu of a field examination.

(8) Exempt Trust Company-A trust company which has been granted an exemption by the Commissioner, is current in filing annual certifications of exempt status with the Department, and is not currently transacting business with the general public.

(9) Transact business with general public-Any sales, solicitations, arrangements, agreements, or dealings to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any individual that is not a direct family member, or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or corporation that is not 100% owned by one or more direct family members.

(b) Application for trust company exemption.

(1) A trust company requesting an exemption from the provisions of the Act shall file an application with the Commissioner containing the following:

(A) a nonrefundable application fee of \$500; and

(B) a detailed statement under oath showing the trust company's assets and liabilities as of the end of the month previous to the filing of the application; and

(C) a statement under oath of the reason for requesting the exemption; and

(D) a statement under oath that the trust company is not currently transacting business with the general public and that the company will not conduct business with the general public as long as the exemption is in force; and

(E) the current street mailing address and telephone number of the physical location in Texas at which the trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a U.S. Postal Service post office box or a private mail box, postal box, or mail drop.

(2) The Commissioner shall not approve a trust company exemption unless the application is completed as required in paragraph (1) of this subsection. A false statement under oath on an application for an exemption under this subsection shall be sufficient grounds for immediate revocation of exempt status by the Commissioner pursuant to §10.11 of this title (relating to Revocation of Exempt Trust Company Status).

(c) Requirements to maintain exemption status under the Act.

(1) To maintain status as an exempt trust company under the Act, the trust company shall comply with the following.

(A) An exempt trust company shall not transact business with the general public.

(B) An exempt trust company shall file an annual certification that it is not transacting business with the general public. This annual certification shall be filed on a form provided by the Department and be accompanied by a \$50 certification fee. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgement stamped by the Department. The Department shall have 30 days from the date of receipt to return a copy of the acknowledged annual certification to the trust company. The burden shall be on the exempt trust company to notify the Department of any failure to return an acknowledged copy of any annual certification within the 30-day period.

(C) An exempt trust company shall comply with the change of domicile provisions of Article 342-314 of the Banking Code. Requests for change of domicile shall comply with the address and telephone requirements of subsection (b)(1)(E) of this section.

(D) An exempt trust company shall be subject to and submit to annual examination by the Department, and shall timely pay all examination fees.

(2) Failure to comply with any requirement of this subsection shall be

grounds for revocation of exempt status by the Commissioner.

(d) **Change of control.** Control of an exempt trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of §3.61 of this title (relating to Acquisition or Change of Control of Trust Companies) and the exempt status of the trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain exemption pursuant to this section.

§10.11. Revocation of Exempt Trust Company Status.

(a) **Definitions.** The definitions applicable to this section shall be the same as set forth in §10.10 of this title (relating to Requirements to Apply for and Maintain Status as Exempt Trust Company) unless the context clearly indicates otherwise.

(b) **Authority to revoke.** The Commissioner shall have authority to revoke the exempt status of a trust company in the following circumstances:

(1) the exempt trust company transacts business with the general public; or

(2) the exempt trust company makes a false statement under oath on any document required to be filed by the Act or by any rule promulgated by the Department; or

(3) the exempt trust company fails to file an annual certification as required by §10.10(c)(1)(B) of this title; or

(4) the exempt trust company fails to comply with the Banking Code, Article 342-314 (Change of Domicile) or with the address and telephone requirements of §10.10(b)(1)(E) of this title; or

(5) the exempt trust company fails to submit to an annual examination as required by §10.10(c)(1)(D) of this title; or

(6) the exempt trust company withholds requested information from the Commissioner or the Commissioner's representatives; or

(7) the exempt trust company violates any provision of the Act applicable to exempt trust companies; or

(8) the exempt trust company is delinquent in paying the Texas corporate franchise tax, as certified by the Texas Comptroller of Public Accounts.

(c) **Notification of revocation of exemption.** If the Commissioner finds that an exempt trust company has violated any of the requirements of the Act or subsection

(b) of this section, the Commissioner may revoke the trust company's exemption by notifying the company by certified mail, hand delivery, or express mail service that the trust company's exempt status has been revoked. The revocation of exempt trust company status shall be effective upon mailing of the notification by the Commissioner or at the time the Commissioner delivers the notification to the carrier for hand or express delivery. Once the notification is effective, the trust company shall be subject to all of the requirements and provisions of the Act applicable to non-exempt trust companies.

(d) **Compliance period.** A trust company shall have five calendar days after the notice is effective to comply with all of the provisions of the Act applicable to non-exempt trust companies, including such capitalization requirements as shall be determined by the Commissioner to be necessary to assure the safety and soundness of the trust company. If, however, the Commissioner determines, at the time of revocation, that the trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the general public, the Commissioner may waive, in the Commissioner's sole discretion, the five calendar day compliance period. In case of such fraudulent or deceptive activities, the Commissioner may immediately initiate action under the Act, or as provided in subsection (e) of this section.

(e) **Remedies for failure to comply.** If the trust company does not comply with all of the provisions of the Act, including such capitalization requirements as have been determined by the Commissioner as necessary to assure the safety and soundness of the trust company, within the five-calendar-day period, the Commissioner may institute one or more of the following actions as soon as practicable:

(1) place the trust company into supervision or in conservatorship in accordance with the Act; or

(2) refer the trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter; or

(3) issue a cease and desist order enjoining the trust company from any prohibited activity; or

(4) initiate the removal of one or more of the trust officers or directors; or

(5) take any other action or remedy prescribed by the Banking Code, the Act, or any applicable rule or regulation.

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

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TRD-9331747

Everette D. Jobe
General Counsel
Texas Department of
Banking

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

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Chapter 13. Practice and Procedures

Subchapter A. Hearing Procedures

Hearings

• 7 TAC §13.70

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) propose an amendment to §13.70, concerning recovery of the cost of preparing the agency record for purpose of judicial review of a decision of the Commissioner. Adoption of the proposed section will result in recovery of costs incurred by the Department of Banking that are not currently being recovered, but are instead being funded by assessments on the banking industry.

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. While the proposed section will result in an increase in revenue from recovery of certain costs, the increased revenue will decrease the amount of Departmental operational expenses that must be recouped through fees imposed on the industries regulated by the Department. Mr. Jobe estimates that the amount of increased revenue from cost recovery (and the corresponding decrease in the base upon which industry fees are calculated) to be \$8,000 in each year for the first five years the proposed section is in effect.

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 is the economic self-sufficiency of the Department with respect to providing the administrative record of a contested case for purposes of judicial review. There will be no effect on small businesses. The net economic cost that will result to persons required to comply with the proposed section is estimated to range from \$500 to \$5,000, depending on the length and complexity of the agency record that is the subject of an appeal.

Comments on the proposed amendment to be considered by the Commissioner and the Commission must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

The amendment is proposed under Texas Government Code, §2001.177, which provides that a state agency may require an appealing party in a contested case to pay all or a part of the cost of preparing the agency record, and Texas Civil Statutes, Article 342-112(2), which provides the Commissioner and the Commission with the authority to establish reasonable and necessary fees for the administration of the Banking Code, Texas Civil Statutes, Article 342-101 et seq.

The following are the articles and sections that are affected by the proposed amendment to §13.70: Texas Government Code, §§2001.171-2001.177.

§13.70. The Record.

(a) The record in a contested case includes:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings of them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or members of the department who are involved in making the decision.

(b) A party who appeals a final decision in a contested case shall pay all of the cost of preparation of the original or a certified copy of the record of the proceeding before the agency proceeding that is required to be sent to the reviewing court.

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 November 8, 1993.

TRD-9331738
Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: January 14, 1994

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



TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 74. Elevators

- 16 TAC §§74.1, 74.10, 74.20, 74.30, 74.50, 74.65, 74.70, 74.80, 74.90, 74.100

The Texas Department of Licensing and Regulation proposes new §§74.1, 74.10, 74.20, 74.30, 74.50, 74.65, 74.70, 74.80, 74.90, and 74.100, concerning elevators, escalators, and related equipment. The Health and Safety Code, Chapter 754, and Texas Civil Statutes, Article 9100, provide the department with the authority to regulate and certificate elevators, escalators, and related equipment.

James D. Brush, II, director, Policies and Standards Division, has determined that there will be fiscal implications as a result of enforcing or administering these sections. The effect on state government for the first five-year period the sections are in effect will be an increase in revenue of \$199,875 for fiscal year 1994 and \$399,750 per year for fiscal years 1995-1998 (after deducting the cost to the department of required tags). There may be fiscal implications for local government as a result of enforcing or administering these sections. The estimated additional cost to local governments will be \$15 per year for each government-owned building with an elevator, escalator, and related equipment unless the local governments, under §745.018, operate an inspection program no less stringent than the state program. Additionally, for those local governments not currently performing inspections, the additional cost would be approximately \$325-\$500 per government-owned elevator, escalator, or related equipment.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the safety, health, and welfare of the public. The cost of compliance with the sections for buildings owned by businesses, including small businesses, or individuals will be \$15 per year per building for filing the inspection certificate plus, if they are not currently having inspections performed, the cost for the required annual inspection of approximately an additional \$325-\$500 per elevator, escalator, or related equipment.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under the Health and Safety Code, Chapter 754, and Texas Civil Statutes, Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§74.1. Authority. The sections in this chapter are promulgated under the authority of the Health and Safety Code, Chapter 754, Subchapter B.

§74.10. Definitions. Waiver—A waiver or delay of compliance with American Society of Mechanical Engineers (ASME), A17.3, Safety Code for Existing Elevators and Escalators.

§74.20. Registration Requirements.

(a) Certified inspectors shall submit a completed application for registration on the form provided by the department. A completed application shall include as a minimum:

- (1) the registration form with all blanks completed;
- (2) the applicable fee referenced in §74.80 of this title (relating to Fees); and
- (3) a copy of both sides of the Qualification of Elevator Inspector (QEI) certification card.

(b) The registration shall be renewed with the department annually on the anniversary of the QEI certification.

§74.30. Exemptions. This chapter does not apply to buildings owned or operated by the federal government.

§74.50. Reporting Requirements. Inspectors shall report noncompliance to the department by copy of the inspection report.

- (1) The report of noncompliance shall identify which elevator(s) or related equipment is in violation.
- (2) The report of noncompliance shall identify the ASME Code section violated.

§74.65. Advisory Board.

(a) Recommendations of the Board will be transmitted to the executive director through the director of policies and standards.

(b) Board meetings are called by the presiding officer or the commissioner. Meetings in excess of two each calendar year shall be authorized by the executive director or the executive director's designee.

(c) Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and travelling to and from board meetings. The least expensive method of travel should be used.

(d) Expenses related to subcommittee meetings will be reimbursed only if authorized by the executive director or the executive director's designee. These expenses will be reimbursed only to the board members appointed to the subcommittee or requested by the presiding officer to assist or appear before the subcommittee.

(e) Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of the Licensing and Regulation's policies governing travel allowances for employees.

§74.70. Responsibilities of the Certificate Holder/Registrant.

(a) An ASME QEI-1 inspector should be registered with the department prior to performing inspections in accordance with §74.100 of this chapter (relating to Technical Requirements).

(b) The owner of the building in which an elevator, escalator, or related equipment is located shall have such equipment inspected annually.

§74.80. Fees.

(a) Inspector registration fees.

- (1) original—\$10; and
- (2) renewal—\$10.

(b) Certificate of inspection filing fees.

- (1) within 30 days of inspection date—\$15; and
- (2) late filing fee—\$115.

(c) Test tags, wire rope, and lead seals.

- (1) \$160 for a kit of 100; and
- (2) \$125 for seal-crimping tool.

(d) Waiver/delay application fee. A \$100 fee shall be charged for applying for a waiver or delay.

§74.90. Sanctions.

(a) If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may institute proceedings to impose administrative Texas Department of Licensing and Regulation sanctions and/or recommend administrative penalties in accordance with the Act, Texas Civil Statutes, Article 9100, or Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).

(b) Denial or revocation of an inspector's registration.

(1) An inspector's registration may be denied or revoked by the commis-

sioner after due investigation and hearing for willful falsification in their application.

(2) The registrant is entitled to a hearing before the commissioner. Each part of all hearings shall be in accordance with the Government Code, Title 10.

(c) An inspector shall be reported to the ASME-QEI-1 certifying body for willful falsification of a certificate of inspection and/or failure to notify the agency of a non-compliance.

§74.100. Technical Requirements.

(a) The department adopts the ASME A17.1 and A17.3, Safety Code for Elevators and Escalators.

(b) All inspections must be performed in accordance with ASME A17.2, Safety Code for Elevators and Escalators.

(c) Test tags must be attached to equipment in accordance with ASME A17.1 and A17.3, Safety Code for Elevator and Escalators.

(1) Only test tags obtained from the department shall be used on the regulated equipment.

(2) Test tags shall be attached to equipment with wire rope and lead seal which shall be purchased from the department.

(3) The lead seal shall be crimped onto the wire rope using a crimping tool purchased from the department bearing the department's 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 November 10, 1993.

TRD-9331845

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

Earliest possible date of adoption: December 17, 1993

For further information, please call: (512) 463-3127



TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Board Rules

• 22 TAC §131.33

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.33, concerning petition for adoption of rules. The section is amended to clarify the reference definition in paragraph (2) and the suggested effective date definition in paragraph (3).

Charles E. Nemir, P.E., 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. Nemir 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 clarification of the information which must be submitted to petition the board to adopt, delete, or amend a rule. 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 Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.33. Petition for Adoption of Rules. Any interested person can request the board to adopt, delete, or amend a rule by filing a petition with the executive director, accompanied by any fee required by statute or board rules. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition will include, but need not be limited to, the following:

(1) (No change.)

(2) Reference. Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified, prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.

(3) A suggested effective date. The desired effective date should be stated. [The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.]

(4)-(7) (No change.)

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

Issued in Austin, Texas, on November 9, 1993.

TRD-9331781

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Proposed date of adoption: January 19, 1994

For further information, please call: (512) 440-7723

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 152. Attorneys' Fees

• 28 TAC §§152.1, 152.3, 152.4

(Editor's Note: Due to inadvertently leaving out a table regarding attorneys' fees in the November 9, 1993, issue of the Texas Register (18 TexReg 8142), the Register is republishing the proposed amendments as follows.)

The Texas Workers' Compensation Commission proposes amendments to §152.1, §152.3, and §152.4, concerning general provisions that apply to all fees, commission action on receipt of the fee application, and guidelines for the fees that attorneys can charge. Rule 152.1 establishes that only attorneys with active licenses can receive a fee, that the fee has to be approved by the commission, the limits to the amount of the fee, the point in time that the fee becomes payable, that lump sums for attorneys' fees have to be approved by the commission, that discharge does not necessarily defeat an attorney's right to collect a fee for services rendered prior to discharge, and what happens when the attorney fee is based on assisting an employee to obtain contested supplemental income benefits. Rule 152.3 sets out the requirements for requesting approval of a fee, the actions which the commission can take regarding the request, who gets copies of the application and the resulting commission order, apportionment of fees, the effect of the commission order, how to appeal a commission order of attorney fees, and how overpayments are recovered. Rule 152.4 establishes a guideline for the number of hours attorneys and their legal assistants may be paid for various activities related to a workers' compensation claim and the hourly rate for attorney and legal assistant services.

These rules are based on the provisions of the Texas Labor Code §408.147, §408.185, §408.221, and §408.222.

Janet Chamness, chief of budget, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to the state or local government as a result of enforcing or administering these rules.

Since attorney fees are, for the most part, paid out of the increased compensation an attorney obtains for the injured employee, business large and small alike, will not be affected by these rules.

Ms. Chamness has determined that for each year of the first five years the rules as proposed is in effect the public benefits anticipated as a result of enforcing the rules will be appropriately documented attorney fee applications, charges and payments that reflect actual and reasonable time spent rendering services to clients, and an efficient process for submitting and approving or denying attorney fee applications.

There are no anticipated economic costs to persons who are required to comply with the rules as proposed because attorneys are already required to submit applications for attorney fee approvals and because fees may be approved in excess of the guideline hours where justified. Setting a maximum hourly rate may limit fees for attorneys who would otherwise charge more than the maximum.

Comments on the proposal will be accepted for at least 30 days after publication of this document in the *Texas Register* and may be submitted to Ken Forbes, Policy and Rules Administrator, Mail Stop #4D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The amendments are proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Labor Code, §408.147, which describes attorney fees related to contests of entitlement to supplemental income benefits, the Texas Labor Code, §408.185, which describes attorney fees related to disputes as to beneficiaries in death cases, the Texas Labor Code §408.221, which describes attorney fees paid to claimant's counsel as well as the commission mandate for developing rules providing guidelines, and the Texas Labor Code, §408.222, which describes attorney fees for defense counsel.

The following codes are affected by this rule: Labor Code, §§402.061, 408.147, 408.185, 408.221, and 408.222.

§152.1 Attorney Fees: General Provisions.

(a) To be eligible to earn a fee, an attorney representing any party shall hold an active license to practice law in Texas and not be currently under suspension for any reason.

(b) An attorney may [shall] receive a fee for representation of any party before

the commission only after the commission approves the amount of the fee. An attorney shall not receive an amount greater than the fee approved by the commission, notwithstanding any agreements between the parties, including retainer fee agreements.

(c) The fee [fixed and] approved by the commission shall be limited to 25% of each weekly income benefit payment to the employee, up to 25% of the total income benefits allowed and shall also be based on the attorney's time and expenses, subject to the guidelines and standards set forth in the Texas Workers' Compensation Act (the Act) and [established in this chapter of the] commission rules. An attorney's fee for representing an injured employee becomes a lien against income benefits due the injured employee once the carrier receives the commission order approving the fee. The carrier must begin payment out of the approved income benefits by mailing a check to the attorney within 14 days after receiving the commission order and thereafter whenever income benefits are paid until the fee has been paid or income benefits cease.

(d) An attorney's fee for representing a claimant may upon commission approval be commuted to a lump sum upon request by the attorney or the carrier [, and may be approved by the commission]. The lump sum payment shall be discounted for present payment at the rate provided under the Act, §1.04. A commuted fee shall be recouped by the carrier out of the future income benefits paid to the represented claimant, not to exceed recoupment of more than 25% of the weekly income benefit out of any single weekly payment. The fee for representing a claimant for death benefits cannot be commuted where the only dispute involves identification of the proper beneficiaries.

(e) A client who discharges an attorney does not, by that [this] action, defeat the attorney's right to claim a fee for services performed by that attorney prior to discharge.

(f) An attorney for an employee who prevails when a carrier [successfully] contests a commission determination of eligibility for supplemental income benefits shall be eligible to receive a reasonable and necessary attorney's fee, including expenses. This fee is payable by the carrier, not out of the employee's benefits and the fee shall not be limited to a maximum of 25% of the employee's recovery. [, from the insurance carrier, in accordance with the Act, §4.28(1)(2).] All provisions of these rules, except §152.4, of this title (relating to Guidelines For Legal [Maximum Hours for Specific] Services Provided to Claimants and Carriers [Performed by a Claimant's Attorney]), apply [, except that such fee shall not be limited to a maximum of 25% of the employee's recovery].

§152.3. Approval or Denial of Fee by the Commission

(a) To claim a fee, an attorney representing any party shall submit [written evidence of the attorney's time and expenses on] Form TWCC-152, Application and Order for Attorney's Fees with time, hourly rate, and expenses itemized separately for the attorney and for any legal assistant. Additional justification, described in §152.4 of this title (relating to Guidelines For Legal Services Provided to Claimants and Carriers), must be attached to the application form for any fee which exceeds the guideline. The commission may also require additional justification for fees which do not exceed the guideline. A copy of the form shall be sent simultaneously to the attorney's client.

(b) The commission shall review each fee application submitted. If the application is for actual time and expenses which are reasonable given the circumstances of the specific claim and which are equal to or less than those allowed by the guideline established in §152.4 of this chapter, the commission may approve the application, and, if approved, shall issue an order for payment. If the fee application is for more than the guidelines allow, the commission shall issue an order to pay the fees which are reasonable given the circumstances of the specific claim and which are adequately justified in writing with any necessary supporting documentation. The commission shall deny any portion of the fee which exceeds the guideline and which is not adequately justified. [The commission shall review each request for an attorney fee and fix and approve a fee based on the evidence submitted, but may ask for additional documentary evidence to fairly evaluate the fee claim. The commission shall consider the guidelines for maximum charges for services provided in §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney), the factors set forth in the Texas Workers' Compensation Act (the Act), § 4.09(c), for claimant's attorneys, and, for a defense attorney representing a carrier, analogous factors as well as the nature and length of the professional relationship to the client. In considering whether a defense counsel's fee is reasonable and necessary, the commission shall also consider the guidelines set out in §152.4 of this title (relating to Guidelines for Maximum Hours for Specific Services Performed by a Claimant's Attorney). The commission shall further consider whether the attorney has raised all issues timely and efficiently, given the facts known to the attorney, in order to avoid multiple proceedings on the same claim.]

(c) An order of the commission that fixes and approves a fee of a claimant's attorney that is the maximum fee allowed under the Act, § 4.09, shall state this fact.]

(c)[(d)] The aggregate attorney fee for representing a claimant shall not exceed 25% of the claimant's recovery. The commission shall apportion the fee between attorneys when more than one attorney claims a fee for representing the same party. The commission shall consider each claim based upon the factors and guidelines outlined in the Act and these rules. [The aggregate fee for attorneys representing a claimant shall not exceed 25% of the claimant's recovery.]

(e) The carrier shall pay, pursuant to the order of the commission, an attorney's fee no later than 14 days after receipt of approval by the commission. For purposes of this section, the date of payment is the date that the initial check for the attorney's fee is mailed.]

(d)[(f)] Except as provided in subsection (e) [(g)] of this section, an attorney, claimant, or carrier who contests the fee fixed and approved by the commission shall request a benefit contested case hearing. The request shall be made by personal delivery or first class mail and be filed with the commission field office handling the claim or the central office of the commission no later than the 15th day after receipt of the commission's order. A claimant may request a hearing by contacting the commission in any manner no later than the 15th day after receipt of the commission's order. The contesting party other than a claimant shall send a copy of the request by personal delivery or first class mail to the carrier and the other parties, including the claimant and attorney.

(e)[(g)] An attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a benefit contested case hearing shall request review by the appeals panel pursuant to the provisions of §143.3 of this title (relating to Requesting the Appeals Panel to review the Decision of the Hearing Officer).

(f)[(h)] The commission's order to pay attorney fees is binding during the pendency of a contest or an appeal of the order. Notice of a contest or an appeal shall not relieve the carrier of the obligation to pay according to the commission order.

(g)[(i)] If an attorney has been paid more than authorized by the final order of the commission, the commission shall order that the excessive amount be reimbursed.

(h)[(j)] If the final order of the commission or a court requires an attorney to reimburse funds, the reimbursement shall be made no later than 15 days after receipt of the final order by mailing or personally

delivering a check as directed by the commission or a court.

§152.4. Guidelines for Legal [Maximum Hours for Specific] Services Provided to Claimants and Carriers [Performed by a Claimant's Attorney].

(a) The guidelines outlined in this rule shall be considered by the commission along with the factors, and maximum fee limitations, set forth in the Texas Labor Code, §408.221 and §408.222 [the Texas Workers' Compensation Act §4.09] and applicable [the] commission rules [applicable to claimant's attorney's fees].

(b) As part of the application for attorney fees, a claimant's attorney shall submit a statement of hours expended on the case by attorneys, paralegal, and law clerks.]

(b)[(c)] An attorney may request, and the commission may approve [approval for] a number of hours greater than those allowed by these guidelines, if the attorney demonstrates [but must demonstrate] to the satisfaction of the commission that the higher fee was justified based on the Texas Labor Code, §408.221 and §408.222 [by the effort necessary to preserve the client's interest, or the complexity of the legal and factual issues involved].

(c)[(d)] The guidelines for legal services provided to claimants and carriers are as follows: [Except when approved by the commission under subsection (c) of this section, an attorney's claim for a service shall not exceed the time limits contained in the following table:]

Service	Maximum Total Hours
1. a. initial interview and research	1.0
b. setting up file; completing and filing forms	0.5
[Interview, Set up File, Basic Research in Compensation Issues, Filing Initial Documents with Commission	1.0]
[TOTAL	1.0]
2. Communications [Client Conferences (per month)] (with client, health care providers, other persons involved in the case)	2.5 [2.0]
[TOTAL	2.0]
3. Direct dispute resolution negotiation with the other party (per month)	3.0
4. Preparation and submission of an agreement or settlement	1.0
5. Participation in Benefit review conference	Actual time in BRC + 2.0
6. Participation in Benefit contested case hearing	Actual time in CCH + 4.0
7. Participation in administrative appeal process	5.0
8. Travel (per month)	Actual costs that are reasonable and necessary
[Resolving Disputes of Compensability or Amount of Payment (includes research and preparation time), either:]	

[1. Informal Resolution of all issues without Commission intervention; or6.0]
[2. Benefit Review Conference, and 2.5 Contested Case Hearing (if necessary), and 1.5 Appeal Panel Review (if necessary)]
1.0

TOTAL 5.0]

[Resolving Disputes About Proper Beneficiary in Death Benefits Cases (includes research and preparation time), either:]

[1. Informal Resolution of all issues without Commission intervention; or 7. 0]

[2. Benefit Review Conference, and 3.0 Contested Case Hearing (if necessary), and 2.0 Appeal Panel Review (if necessary)].

1.0 TOTAL 6.0]

[Contest of Impairment Rating, Maximum Medical Improvement, Ability to Return to

Work, Entitlement to Lifetime Benefits, and all other Medical Issues relating to income benefits (includes review of medical records, research, and preparation time), either:]

[1. Informal Resolution of all issues without Commission intervention; or 6. 0]

[2. Benefit Review Conference, and

5.5 Contested Case Hearing (if necessary).

2.5 Appeal Panel Review (if necessary).

1.0 TOTAL 9.0]

(d)[(e)] The maximum hourly rate for legal services shall be as follows:
Hourly rate:

(A) Attorney—\$150.

(B) Legal assistant (not to include hours for general office staff) \$ 50
[When an attorney's only service has been

to assist a claimant with completing and filing claim forms and other documents, and the claim is not disputed, the range of hours allowed shall be in the range of one to three hours, depending upon the extent of services rendered.]

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 29, 1993.

TRD-9331266

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 10, 1993

For further information, please call: (512) 440-3592

◆ ◆ ◆

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter B. General

• 7 TAC §3.38

The State Finance Commission has withdrawn the emergency effectiveness of new §3.38, concerning general. The text of the emergency new §3.38 appeared in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5931). The effective date of this withdrawal is November 29, 1993.

Issued in Austin, Texas, on November 8, 1993.

TRD-9331743 Everette D. Jobe
General Counsel
State Finance Commission

Effective date: November 29, 1993

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

Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The State Finance Commission has withdrawn from consideration for permanent adoption a proposed new §3.91 which appeared in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5947). The effective date of this withdrawal is November 16, 1993.

Issued in Austin, Texas, on November 8, 1993.

TRD-9331741 Everette D. Jobe
General Counsel
State Finance Commission

Effective date: November 16, 1993

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 133. Hospital Agreements

• 25 TAC §133.131

The Texas Department of Health inadvertently adopted §133.131 and §134.101, concerning Cooperative Agreements and Certificates of Public Advantage, on an emergency basis in the November 2, 1993 issue of the *Texas Register* (18 TexReg 8024). These sections are being withdrawn effective immediately.

Issued in Austin, Texas, on November 8, 1993.

TRD-9331756 Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Effective date: November 8, 1993

Proposal publication date: November 2, 1993

For further information, please call: (512) 834-6645

Chapter 134. Private Mental Hospitals and Mental Health Facilities Licensing

Subchapter G. Cooperative Agreements

• 25 TAC §134.101

The Texas Department of Health inadvertently adopted §134.101, concerning Cooperative Agreements and Certificates of Public Advantage, on an emergency basis in the November 2, 1993, issue of the *Texas Register* (18 TexReg 8024). This section is being withdrawn effective immediately.

Issued in Austin, Texas, on November 8, 1993.

TRD-9331757 Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Effective date: November 8, 1993

Proposal publication date: November 2, 1993

For further information, please call: (512) 834-6645



Name: Erwin Paz
Grade: 8
School: Spring Oaks Middle, Spring Branch ISD

Erwin Paz

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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter B. General

• 7 TAC §3.31, §3.32

The Finance Commission of Texas (the Commission) adopts the repeal of §3.31 and §3.32, without changes to the text as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5944).

The repealed sections, concerning certain application fees for state banks, have been rendered obsolete by new §3.37, adopted in final form in this issue of the *Texas Register*.

Pursuant to Texas Civil Statutes, Article 342-112(2), the Banking Commissioner and the Commission are charged with establishing reasonable and necessary fees for the administration of the Banking Code, Texas Civil Statutes, Article 342-101 et seq. Repealed §3.31 established a \$5,000 application fee for a state bank or trust company charter and imposed the cost of investigation upon the applicant. Repealed §3.32 imposed a change of domicile fee of \$150. Newly adopted §3.37 sets filing fees for certain types of applications for banks, trust companies and others, and duplicates and types of fees formerly imposed by §3.31 and §3.32.

The repeal is for the purpose of deleting obsolete and duplicative fees from state law.

The only comment received from the Texas Bankers Association was in favor of the proposed repeal of §3.31 and §3.32, and was coordinated with favorable comment on the then proposed §3.91. To the extent comments received on the proposal for a replacement section can be viewed as comments on the proposed repeal, all were favorable.

The repeals are adopted under the general rulemaking authority of the Commissioner and the Commission with regard to fees for the administration of the Banking Code pursuant to Texas Civil Statutes, Article 342-112(2).

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 November 8, 1993.

TRD-9331745

Everette D. Jobe

General Counsel
Texas Department of
Banking

Effective date: November 29, 1993

Proposal publication date: September 7, 1993

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

• 7 TAC §3.37

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) adopts new §3.37, concerning application fees and recovery of investigative costs, without changes to the text as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5944).

Pursuant to Texas Civil Statutes, Article 342-112(2), the Commissioner and the Commission are charged with establishing reasonable and necessary fees for the administration of the Banking Code, Texas Civil Statutes, Article 342-101 et seq. The purpose of any fee charged by the Commissioner, whether the fee is for applications, annual assessments, examinations, recovery of costs, or other purposes, is to enable the Texas Department of Banking (the Department) to be self-supporting. Texas Civil Statutes, Article 342-112(3) provide that all fees must be deposited in the Banking Department Expense Fund, from which all expenses incurred by the Department must be paid. State law prohibits payment of Department expenses from any other funds of this State.

As a policy matter, the Commissioner and the Commission plan to reduce the Department's heavy reliance on examination fees, impose appropriate application fees and cost deposits to make identifiable services of the Department self-sustaining to the extent possible, and calculate periodic assessment fees in sufficient amount to fund the remaining unrecovered regulation expenses of the Department. This effort is being undertaken with respect to every industry regulated by the Commissioner with the objective of having each industry pay its proportionate share of the cost of regulation. Adoption of new §3.37 is expected to result in better matching of the actual cost of regulation with the service provided for the purpose of achieving economic self-sufficiency for application processing within the Department. A further purpose served by new §3.37 is the consolidation of all bank and trust company application fees in one section for ease of reference, even those fees set by statute.

New §3.37 as adopted sets filing fees for certain types of application for banks, trust companies and others, and for protests filed against such applications, provides for payment of filing fees at the time of filing and for the nonrefundability of filing fees generally, sets the amount of application fees at the estimated base cost of processing the application or at the amount set by statute, and provides for recovery of investigative costs incurred by the Department in certain situations.

Only one comment was received from the Texas Bankers Association, and that commenter, based on the Department's explanation of its guiding policy in the preamble, did not offer any objection to or comment against the proposed new fee structure, while noting that certain application fees were being substantially increased.

The new section is adopted under Texas Civil Statutes, Article 342-112(2), which provide the Commissioner and the Commission with the authority to establish reasonable and necessary fees for administration of the Banking Code. Alternate statutory authority for certain fees can be found in Texas Civil Statutes, Articles 3921 (bank charter fees), 342-331(c), 342-363(c) (bank charter fees and costs), 342-401a(J) (fees and costs for review of stock transfer), 342-903(1)(c) (branch office application fees), 342-1005(4) (application fees for foreign bank agencies), 342-1007(c) (renewal application fees for foreign bank agencies), and 342-1102 (certain statutory provisions applicable to trust companies). The Commissioner expressly adopts those aspects of this section that are within her sole authority to do so. The Commission expressly adopts those aspects of this section that are within its sole authority to do so.

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.

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Everette D. Jobe
General Counsel
Texas Department of
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For further information, please call: (512) 475-1300

• 7 TAC §3.38

The Finance Commission of Texas (the Commission) adopts new §3.38, with changes to the proposed text as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5947).

Article XVI, §16(c), of the Texas Constitution provides that a state bank "has the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." Pursuant to Texas Civil Statutes, Article 342-113(4), the Commission is charged with promulgating rules to "permit state banks to transact their affairs in any manner ... which they could do ... were they organized and operating as a National bank under the laws of the United States...." Through an apparent oversight, House Bill Number 1212, 73rd Legislature, 1993, provided for the conversion of national banks to state limited banking associations but not for conversion of state banks to state limited banking associations. State banks can become state limited banking associations, but only through a presumably more costly and time consuming method known as "phantom" mergers or "interim bank" mergers. New §3.38 will preserve competitive parity between state and national banks as mandated by the Texas Constitution and Article 342-113(4).

The section will permit but not require a state bank that wishes to convert to a state-limited banking association to do so in the same manner as a national bank is authorized to do. Any state bank that chooses to take advantage of the option presented by this section must obtain the approval of its board of directors and its shareholders as if such transaction was a merger pursuant to Texas Civil Statutes, Article 342-305, including the obligation to pay dissenters' rights in the manner contemplated therein. Similarly, changes to the section as proposed will permit a state-limited banking association to convert to a state banking association in the same manner as a national bank can convert to a state bank. No state-limited banking association yet exists in Texas.

All comments received from the Texas Bankers Association and Independent Bankers Association of Texas were strongly in support of the proposed section. One commenter stated that it was good policy for the Texas Department of Banking to promote and support alternative forms of charters for state banks to enhance their ability to compete and provide banking services to their communities.

The Texas Department of Banking agrees with all comments. The rationale advanced by the commenters also supports a reciprocal provision permitting state limited banking associations, of which none currently exists, to convert to state banking associations. In other words, the section as proposed would permit corporate bank charters to be converted into partnership bank charters under specified conditions. The added subsection would permit partnership bank charters to convert to corporate bank charters under substantially similar conditions.

An additional change was made to refer to the merger provisions for banks rather than to

the merger provisions for business corporations. The Commission was primarily concerned with preserving dissenters' rights; the dissenters' rights provision of the Texas Business Corporation Act is incorporated by reference into the merger provision for banks contained in Texas Revised Civil Statutes, Article 342-305.

The new section is adopted under Texas Civil Statutes, Article 342-113(4), which provide the Commission with the authority to promulgate general rules and regulations to permit state banks to transact their affairs in any manner which they could do were they organized and operating as national banks.

§3.38. *Conversion of a State Banking Association to a Limited Banking Association, or a Limited Banking Association to a State Banking Association.*

(a) Conversion of a Banking Association to a Limited Banking Association.

(1) A banking association that desires to become a limited banking association may do so, in addition to any other method authorized by law, by conversion pursuant to Texas Civil Statutes, Article 342-310, in the same manner as it could do if it was organized and operating as a national bank under the laws of the United States, subject to the provisions of paragraph (2) of this subsection.

(2) A banking association that wishes to convert to a limited banking association pursuant to Texas Civil Statutes, Article 342-310 must obtain the approval of its board of directors and its shareholders as if such conversion was a merger pursuant to Texas Civil Statutes, Article 342-305, including the obligation to pay dissenters' rights in the manner contemplated therein.

(b) Conversion of a Limited Banking Association to a Banking Association.

(1) A limited banking association that desires to become a banking association may do so, in addition to any other method authorized by law, by conversion pursuant to Texas Civil Statutes, Article 342-310, in the same manner as it could do if it was organized and operating as a national bank under the laws of the United States, subject to the provisions of paragraph (2) of this subsection.

(2) A limited banking association that wishes to convert to a banking association pursuant to Texas Civil Statutes, Article 342-310 must obtain the approval of its board of managers and its participants as if such conversion was a merger pursuant to Texas Civil Statutes, Article 342-305, including the obligation to pay dissenters' rights in the manner contemplated therein.

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.

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Chapter 4. Currency Exchange

• 7 TAC §4.3

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) adopt §4.03, with changes to the proposed text as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5950).

Additional records required by the adoption of this amendment will assist the Department's examiners in fulfilling the examination requirement of the Currency Exchange Act (the Act) and increase the efficiency of the examination function. This increased efficiency should shorten the average amount of time required to conduct an examination of a licensee and should therefore lower the cost of examination to the licensee.

Increased accuracy and completeness of recordkeeping outlined in the proposed amendment will enable the Department to ensure that the amount of the bond posted by the licensee under the Act is sufficient and complies with the Department's rules with respect to bonding. More detailed transaction records will increase the efficiency and effectiveness of the examination process, thereby enhancing the orderly administration of the Act and ensuring that the purposes of the Act are substantially fulfilled.

Two comments were received during the statutory comment period. The first comment received addressed the ambiguity contained in subsection (d)(1)(B) and (2)(B) of the Section. The proposed language did not make it clear that these requirements applied only to transactions in an amount of \$1,000 or more. Subsection (d)(1)(B) and (2)(B) has been revised to clarify this ambiguity.

The other commenter supplied general as well as specific recommendations with respect to the proposed rule. Generally, the commenter was of the opinion the rule should conform in all respects to the federal regulations governing such transactions. The commenter also was of the opinion the regulation should provide the commissioner with discretion to waive any provisions of the rule upon a showing of good cause. Subsection (g) has been added in response to that recommendation.

The commenter specifically objected to the requirements in subsection (d)(1)(A) and (2)(A) to the extent that the receipt issued by the licensee bear information other than the date of the transaction, the amount of the transaction, the rate of exchange, and the

applicable commission for the transaction. The commenter also raised an objection to the requirement that the licensee issue sequentially numbered receipts. The commenter suggested, as an alternative, that the receipts bear a unique identification number. Subsection (d)(1)(A) and (2)(A) has been modified in response to these two comments. However, the additional information required on the receipt in these subparagraphs as originally proposed still must be recorded by the licensee, but need not be recorded on the receipt issued to their customer. The commenter also objected to the requirements in subsection (d)(1)(A) and (B) that duplicate copies of the receipts be maintained by the licensee for a period of at least five years. The commenter suggested that the licensee be allowed to retain the requested information in any retrievable form. Subsection (e) has been added in response to this comment. Subsection (e) allows the licensee to maintain the required logs, records, and receipt information in any readily accessible and retrievable form, and specifically notes that the licensee need not keep an actual duplicate copy of the receipt so long as the information required on the receipt is maintained in a readily accessible and retrievable form.

The commenter objected to the requirements of subsection (d)(1)(B) and (2) (B) in their entirety. The commenter also objected to the requirements in subsection (d)(1)(C) and (2)(C) and suggested that this subsection imposed an undue burden on the licensee and suggested that the subparagraphs be amended and limited to multiple transactions occurring at the same physical location.

Both commenters also commented on existing language in the rule. We have not addressed those comments, however, because they were not directed at any of the language in the proposed amendments.

Robinson, Felts and Mashburn, Austin, commented in favor of the adoption. Howry and Simon, Washington, D.C., commented against the adoption.

The Commissioner and the Commission disagree with the comment that all recordkeeping regulations under the Act should conform in all respects to federal regulations governing currency exchange and transmission transactions. Although the Commission and Commissioner agree that, in theory, the imposition of significantly different recordkeeping requirements at the state and federal levels may impose a heavy burden on licensees, that simply is not the case in this instance. The existing federal regulations regarding currency exchange transactions and the proposed federal regulations with respect to currency transmission transactions are significantly similar to the requirements which will be imposed by the amendments to this rule.

The Commission and Commissioner disagree that the proposed amendments, to the extent they differ from existing and proposed federal regulations, will result in significantly increased costs to or severe burdens on licensees. Neither the Commission and Commissioner nor the federal government would penalize a licensee for maintaining records that exceed that which is required un-

der their respective regulations. In short, because the recordkeeping requirements at the state and federal levels are so similar, a licensee need only comply with the more stringent recordkeeping regulations or a hybrid of the state and federal regulations that subsumes the two levels of regulation, rather than keep separate sets of records for each and every regulatory or reporting entity which comport with their respective requirements as the commenter seems to imply. By way of example, the commenter makes reference to the fact that subsection (d)(2)(A) requires certain records regarding currency transmission transactions in excess of \$1,000, whereas the proposed federal regulations would require that licensees maintain similar records for all currency transmission transactions, and suggests that this inconsistency results in an added burden to the licensee. In fact, so long as the specific records required under the proposed federal regulations are the same as the records required under subsection (d)(2)(A) of the rule, then all licensees need do is comply with the proposed federal regulations, because in that instance the federal regulations would subsume the state regulations. The difference in the dollar threshold would be of no consequence.

One commenter suggests that compliance with the proposed requirement in subsection (d)(1)(B) would be impossible in instances where the exchange transaction is conducted through the mail. The Commission and Commissioner are of the opinion that a licensee which engages in a currency exchange transaction in an amount of \$1,000 or more via mail does so imprudently and with reckless disregard of its duties under the Act, and would be considered to be operating its business in an unsafe and unsound manner. It is understood that a licensee may engage in such transactions with customers or clients who have an established, on-going business relationship with the licensee. In such cases, it would be sufficient that the licensee verify this information once at the commencement of the relationship, so long as the licensee has procedures in place to ensure transactions purported to be initiated by the client or customer are in fact that customer's or client's transactions.

In addition, the commenter suggests that compliance with subsection (d)(1) (C) and (2)(C) would be unworkable if they are intended to impose upon the licensee an obligation to obtain the requested information where a customer engages in multiple transactions in different locations. The terminology "should have known" in the rule was intended to denote the fact that a person of reasonable prudence and intelligence would ascertain the fact in question in the performance of his duty. The commenter seems to be under the impression that it charges employees, officers, directors or partners of a licensee with imputed knowledge that an earlier transaction was conducted or that a later transaction will be conducted by or on behalf of the same person. The actual intent was to make certain that licensees do not ignore apparent or readily ascertainable facts and, as a result, allow individuals to structure transactions to defeat the purposes of the recordkeeping requirements.

The amendment is adopted under Texas Civil Statutes, Article 350, §7, which require that the Commission adopt rules necessary to implement Article 350, including rules related to recordkeeping and reporting requirements.

§4.03 Reporting and Recordkeeping.

(a) Persons holding a license (Licensees) pursuant to Texas Civil Statutes, Article 350 (the Act) shall maintain separate accounting books and records in Texas relating to their operations. All books and records maintained by Licensees shall be located where they are readily accessible to the Department of Banking.

(b) Licensees shall comply with all federal laws and regulations affecting their operations and shall maintain records of all filings made pursuant to and documentation required under all applicable federal laws and regulations, including the requirements set forth in 31 United States Code, 5313, and 31 Code of Federal Regulations, Part 103.

(c) Each Licensee shall, in a form prescribed by the Banking Commissioner, file quarterly written reports with the Department of Banking.

(d) In addition to the records required to be maintained under subsections (a) and (b) of this section Licensees shall keep the following records.

(1) Currency Exchange.

(A) No Licensee may engage in a currency exchange transaction in an amount of \$1,000, or more unless the Licensee issues sequentially numbered receipts or receipts bearing a unique identification or transaction number for each of those transactions. The receipts must include the date of the transaction, the amount and type of currency received and given in exchange, the rate of exchange, and the applicable commission for the transaction. The Licensee also shall maintain a record of each such transaction that includes the identifying receipt number as well as the following information:

(i) the name and address of the customer;

(ii) the social security number of the customer, or if the customer is an alien and does not have a social security number, then the passport number, alien identification card number, or other official document of the customer evidencing nationality or residence (e.g., a provincial driver's license with indication of home address);

(iii) the name and address of the person on whose behalf the transaction is being conducted if the customer is conducting the transaction on be-

half of another person together with the appropriate identification for such other person specified in clause (ii) of this subparagraph;

(iv) the location of the office where the transaction was conducted; and

(v) the initials of the employee of the Licensee effecting the transaction.

(B) In addition, in connection with all transactions in an amount of \$1,000 or more, the Licensee shall verify the customer's name and address by examination of a document that contains the name, address, and a photograph of the customer and is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors. The Licensee shall record the specific identifying information on the receipt or in the log entry related to the transaction (e.g., state of issuance and number of driver's license).

(C) Contemporaneous currency exchange transactions of the same or different types of currency made by or on behalf of the same person totaling \$1,000 or more shall be treated as one transaction. Multiple transactions made by or on behalf of the same person during one business day totaling \$1,000 or more shall be treated as one transaction if an individual employee, director, officer, or partner of the Licensee knew or should have known that the transactions occurred.

(2) Currency Transmission.

(A) No Licensee authorized to engage in currency transmission may enter into a currency transmission transaction in an amount of \$1,000 or more unless the Licensee issues sequentially numbered receipts or receipts bearing a unique identification or transaction number for each of those transactions. The receipt must bear the date of the transaction, the amount of the transmission in U.S. dollars, the rate of exchange (if applicable), and the applicable fee or commission for the transaction. The receipt also must indicate whether the transaction was initiated or terminated at the Licensee's business. The Licensee also must maintain a record of each such transaction that includes the identifying receipt number as well as the following information:

(i) the name and address of the customer, whether sender or recipient;

(ii) the social security number of the customer, or if the customer is an alien and does not have a social secu-

rity number, then the passport number, alien identification card number, or other official document of the customer evidencing nationality or residence (e.g., a Provincial driver's license with indication of home address);

(iii) the date of birth of the customer;

(iv) the name and address of the person on whose behalf the transaction is being conducted, if the customer is conducting the transaction on behalf of another person, together with the appropriate identification for such other person specified in clause (ii) of this subparagraph;

(v) the location of the office where the transaction was conducted;

(vi) the designated recipient's name, address, and telephone number, if the customer is the sender;

(vii) the sender's name, address, and telephone number, if the customer is the recipient and that information is available to the Licensee;

(viii) any instructions or messages relating to the transmission; and

(ix) the method of payment (e.g., cash, check, credit card, etc.).

(B) In addition in connection with all transactions in an amount of \$1,000 or more, the Licensee shall verify the customer's name and address by examination of a document that contains the name and address of the customer and is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the receipt (e.g., state of issuance and number of driver's license).

(C) Contemporaneous transactions initiated by or on behalf of the same person or received by or on behalf of the same person totaling \$1,000, or more shall be treated as one transaction. Multiple transactions during a single business day initiated by or on behalf of the same person or received by or on behalf of the same person and totaling \$1,000 or more shall be treated as one transaction if an individual employee, director, officer, or partner of the Licensee knew or should have known that the transactions occurred.

(3) A Licensee must maintain a log or logs for each calendar month on which shall be recorded the following information for each transaction;

(A) the date of the transaction;

(B) the location of the office where the transaction was conducted;

(C) the amount and type of currency received and given in exchange, or the amount of the transmission, as applicable;

(D) the rate of exchange, if applicable;

(E) the amount of any service charges or fees assessed in connection with the transaction; and

(F) the number of the receipt issued in connection with the transaction, if any.

(e) All logs, records, and receipt information may be maintained by the Licensee in any readily accessible and retrievable form and must be maintained for a period of at least five years. An actual duplicate copy of receipts issued by a Licensee need not be retained if the information required on the receipt is maintained in a readily accessible and retrievable form.

(f) Failure to comply with this section shall be grounds for denial, revocation, or suspension of a license as provided in the Act, §6 and assessment of a civil penalty in accordance with the Act, §15.

(g) The commissioner may waive any requirement of this section upon a showing of good cause if the commissioner is of the opinion that:

(1) the Licensee maintains records sufficient for the Department to examine the Licensee's operations; or

(2) the imposition of the requirement would cause an undue burden on the Licensee and conformity with the requirement would not significantly advance the state's interests under the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Everette D. Jobe
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Texas Department of
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For further information, please call: (512) 475-1300

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Part II. Banking Department of Texas

Chapter 13. Practice and Procedure

Subchapter A. Hearing Proce- dures

Hearings

• 7 TAC §13.71

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) adopts new §13.17, without changes to the text as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5952).

Applicants to the Department of Banking seeking approval for certain actions are charged fees and assessed costs for the purpose of enabling the function of processing applications to be self-supporting. Texas Civil Statutes, Article 342-112(3), provides that all fees must be deposited in the Banking Department Expense Fund, from which all expenses incurred by the Department must be paid. State law prohibits payment of Department expenses from any other funds of this State.

Applicants who are forced to seek a hearing because of agency opposition to the application are thus charged for the cost of the hearing, including internal costs such as staff time and external costs such as the fee for a court reporter and costs of preparing the transcript. Applicants to the Department in opposition to a filed application who force a hearing to be held currently are not charged any portion of the incurred costs, artificially increasing the cost to the applicant seeking approval, sometimes prohibitively. Circumstances in the past have convinced the Banking Commissioner that, on occasion, the only reason for a protest, albeit unstated, is to increase the cost to the original applicant. New §13.71 allows the Commissioner, in the exercise of discretion, to equitably divide the costs associated with the hearing among the parties.

All State incurred costs related to conduct of an administrative hearing are currently recoverable from the applicant seeking approval, and new §13.71 will permit an equitable portion of such costs to be assessed to the applicant in opposition in appropriate circumstances, after hearing and upon a showing of good cause.

One comment was received from the Texas Bankers Association and was in support of the proposed section.

The new section is adopted under Texas Civil Statutes, Article 342-112(2), which provide the Commissioner and the Commission with the authority to establish reasonable and necessary fees for the administration of the Banking Code.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Everette D. Jobe
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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter W. Registration of Commercial Carriers

• 16 TAC §5.501

The Railroad Commission of Texas adopts an amendment to §5.501, concerning definitions as they pertain to the registration of commercial carriers, without changes to the proposed text as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5953).

The amendment is adopted as a result of legislative changes made by the 73rd Legislature, 1993, which transferred jurisdiction over the licensing of tow trucks from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas. The proposed amendment adds tow trucks to the definition of the term "commercial motor vehicle," and specifically exempts tow trucks from the requirements of the commission's rules concerning the registration of commercial carriers.

No comments were received regarding adoption of the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Article 911b, §4(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and for the safety of operations of motor carriers.

The article affected by this rule is Texas Civil Statutes, Article 911b.

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.

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TRD-9331752

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Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Appli- cability and Requirements

• 16 TAC §9.19

The Railroad Commission of Texas adopts an amendment to §9.19, relating to insurance requirements, with changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6794).

The commission adopts changes to the proposed text of §9.19(i) and (j) to correct the citation to the statutory provisions which permit a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for workers' compensation and general liability and/or motor vehicle liability coverage from Texas Revised Civil Statutes, Article 8309h, to Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and the Texas Natural Resources Code, §113.097.

The commission adopts the amendments to implement House Bill 2007, 73rd Legislature, 1993, which allows LP-gas licensees to submit alternative accident and health insurance coverage as a substitute for workers' compensation insurance effective September 1, 1993. House Bill 2007 also provides for a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for workers' compensation and general liability and/or motor vehicle liability insurance as authorized by the state workers' compensation act. The amendments add language that allows for accident and health insurance coverage for medical expenses in the principal amount of not less than \$150,000; accidental death benefits in the principal amount of not less than \$100,000; loss of limb or sight on a scale based on the principal amount of not less than \$100,000; and loss of income based on not less than 60% of the employee's pre-injury income for not less than 52 weeks, subject to a maximum weekly benefit equal to the average weekly wage calculated annually by the Texas Employment Commission (currently \$460 weekly).

The amendments also add language that allows a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for workers' compensation and general liability and/or motor vehicle liability insurance as authorized by the state workers' compensation act by filing an LP-Gas Form 995, Certification of Political Subdivision of Self-Insurance for Workers' Compensation, General Liability, and/or Motor Vehicle Liability Insurance, as evidence of self-insurance.

The commission received only one comment on the proposed amendment, from the Texas

Propane Gas Association (TPGA). TPGA's comment did not clearly indicate opposition or favor toward the proposed amendment, and did not offer alternative language.

TPGA commented that the rules must not represent a means or a vehicle to ease entry into the propane business; that the commission should not view House Bill 2007 as an invitation to promote alternatives to workers' compensation coverage; and that rules allowing for workers' compensation alternatives must be strict and enforceable. The commission disagrees that the proposed amendment to §9.19 would ease entry into the propane business. The legislature, through enactment of House Bill 2007, established the availability of alternatives to workers' compensation insurance coverage, and the proposed rule amendment simply establishes the minimum amounts of alternative coverage. Whether the rule amendment eases entry into the propane business is irrelevant.

The amendment is adopted under the Texas Natural Resources Code, 5113.051, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the LP-gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public, and §113.097, as amended by House Bill 2007, 73rd Legislature, 1993.

The amendment implements Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and the Texas Natural Resource Code, §113.051 and §113.097.

§59.19. Insurance Requirements.

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

(d) A licensee or applicant for a license that does not employ or contemplate employing any employee in LP-gas related activities may file LPG Form 996B in lieu of a certificate of workers' compensation, including employers liability insurance or alternative accident and health insurance coverage. The licensee or applicant for license must file the required insurance certificate with the commission before hiring any person as a dealership employee.

(e)-(g) (No change)

(h) Notwithstanding the requirements specified in Table 1 of this section that each licensee carry a policy of workers' compensation insurance, the licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in this state as an alternative to

workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.

(i) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements of this section for workers' compensation coverage by submitting an LPG Form 995 as evidence of self-insurance, if permitted by the state workers' compensation act, Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and the Texas Natural Resources Code, §113.097, to the commission.

(j) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements relating to general liability and/or motor vehicle liability insurance by submitting an LPG Form 995 as evidence of self-insurance coverage if permitted by the state Workers' Compensation Act, Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and the Texas Natural Resources Code, §113.097.

LPGAS INSURANCE REQUIREMENTS

<u>CATEGORY OF LICENSE</u>	<u>TYPE OF COVERAGE</u>	<u>ENDORSEMENT REQUIRED</u>	<u>FORM REQUIRED</u>	<u>STATEMENT IN LIEU OF REQUIRED INSURANCE PLAN</u>
ALL	Workers' Compensation, including Employer's Liability	WC421601, Texas Notice of Material Change	LPG Form 996A	LPG Form 996B
ALL	Alternative to Workers' Compensation, including Employer's Liability, Accident/Health insurance coverage; Medical expenses in the principal amount of not less than \$150,000; Death benefits in the principal amount of not less than \$100,000; Loss of limb or sight on a scale based on the principal amount of not less than \$100,000; Loss of income based on not less than 60% of the employee's pre-injury income for not less than 52 weeks, subject to a maximum weekly benefit equal to the average weekly wage calculated annually by the Texas Employment Commission	N/A	LPG Form 996A	N/A
A,B,C,E,O	General Liability Coverage including: premises and operations in an amount not less than: \$300,000 per occurrence \$300,000 aggregate Completed operations and products liability in an amount not less than: \$300,000 aggregate	CG0215 Texas Changes Amendment or Cancellation Provisions or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B

CONTINUED ON NEXT PAGE

LPGAS INSURANCE REQUIREMENTS CONTINUED

<p>D.F.I.G.L.M.N.K</p> <p>General Liability Coverage including: Premises and operations in an amount not less than: \$25,000 per occurrence \$50,000 aggregate</p>	<p>CG0205 Texas Changes Amendments or Cancellation Provisions or Coverage Change Endorsement</p>	<p>LPG Form 998A</p>	<p>LPG Form 998B</p>
<p>H.J</p> <p>\$300,000 per occurrence \$300,000 aggregate</p>	<p>CG02 05 Texas Changes Amendments or Cancellation Provisions or Coverage Change Endorsement</p>	<p>LPG Form 998A</p>	<p>LPG Form 998B</p>
<p>C.E.H.J Ultimate Consumer * A U/C</p> <p>Motor Vehicle Coverage: Minimum \$500,000 combined single limit for bodily injured to or death of all persons injured or killed in any accident, and loss or damage to property of others in any one accident</p>	<p>TE2126A Liquefied Petroleum Gas Licensed Motor Vehicle Endorsement Texas Railroad Commission Form Endorsement</p>	<p>LPG Form 997A</p>	<p>LPG form 997B</p>

TABLE I

Refer to Section 9.4 for a description of each category
 See pages XI - X78 blank forms and he to complete forms

2

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 November 8, 1993.

TRD-9331761

Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Effective date: November 29, 1993

Proposal publication date: September 28, 1993

For further information, please call: (512) 463-6949

Chapter 13. Regulations For Compressed Gas (CNG) Fuel Systems

Subchapter C. Classification, Registration, and Examination

• 16 TAC §13.62, §13.63

The Railroad Commission of Texas adopts amendments to §13.62, relating to insurance requirements, and §13.63, relating to qualification as self-insured, with changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6798).

The commission adopts §13.62 with changes to the proposed text to redesignate the subsections (to incorporate other changes to §13.62 which became effective on October 15, 1993, after publication of the proposed text. The changes reflect that subsections §13.62(a)-(i) are unchanged, rather than §13.62(a)-(d), as published; and that new subsections §13.62(j), (k), and (l) are added, rather than new subsections §13.62(e), (f), and (g), as published. These changes are non-substantive and are editorial only.

The commission adopts §13.63 with changes to the proposed text of §13.63(i) and (j) to correct the citation to the statutory provisions which permit a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for workers' compensation and general liability and/or motor vehicle liability coverage from Texas Civil Statutes, Article 8309h, to Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and Texas Natural Resources Code, §116.036.

The commission adopts the amendments to implement Senate Bill 576, 73rd Legislature, 1993, which allows Compressed Natural Gas (CNG) licensees to submit alternative accident and health insurance coverage as a substitute for workers' compensation insurance effective September 1, 1939. Senate Bill 576 also provides for a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for workers' compensation and general liability and/or motor vehicle liability insurance as authorized by the state workers' compensation act.

The amendments add language that allows for accident and health insurance coverage in the following amounts: medical expenses in the principal amount of not less than \$150,000; accidental death benefits in the principal amount of not less than \$100,000; loss of limb or sight on a scale based on the principal amount of not less than \$100,000; loss of income based on not less than 60% of the employee's pre-injury income for not less than 52 weeks, subject to a maximum weekly benefit equal to the average weekly wage calculated annually by the Texas Employment Commission (currently \$460 weekly).

The amendments also add language that allows a state agency or institution, county, municipality, school district, or other governmental subdivision to substitute self-insurance for workers' compensation and general liability and/or motor vehicle liability insurance as authorized by the state workers' compensation act by filing a CNG Form 1995, Certification of Political Subdivision of Self-Insurance for Workers' Compensation, General Liability, and/or Motor Vehicle Liability Insurance, as evidence of self-insurance.

The amendments are adopted under the Texas Natural Resources Code, §116.012, which authorizes the Railroad Commission of Texas to promulgate rules and standards related to the Compressed Natural Gas industry and its operations, which will protect or tend to protect the health, safety, and welfare of the general public, and §116.036, as amended by Senate Bill 576, 73rd Legislature, 1993.

The amendments implement or affect the following statutes, articles, or codes: §13.62, §13.63—Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and Texas Natural Resources Code, §116.012 and §116.036.

§13.62. Insurance Requirements.

(a)-(i) (No change.)

(j) Notwithstanding the requirement specified in Table 1 of this section that each licensee carry a policy of workers' compen-

sation insurance, the licensee may protect its employees by obtaining accidental insurance coverage from an insurance company authorized to write such policies in this state as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.

(k) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements relating to workers' compensation coverage by submitting evidence of self-insurance that complies with the requirements of §13.63 of this title (relating to Qualification as Self-Insured).

(l) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements relating to general liability and/or motor vehicle liability insurance by submitting evidence of self-insurance that complies with the requirements of §13.63 of this title (relating to Qualification as Self-Insured).

§13.63. Qualification as Self-Insured.

(a)-(f) (No change.)

(g) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for workers' compensation coverage of §13.62 of this title (relating to Insurance Requirements) by submitting title (relating to Insurance Requirements) by submitting evidence of self-insurance permitted by the state Workers Compensation Act, Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h, and the Texas Natural Resources Code, §116.036, by submitting a CNG Form 1995 to the commission.

(h) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements for general liability and/or motor vehicle liability insurance in §13.62 of this title (relating to Insurance Requirements) by submitting a CNG Form 1995 as evidence of self insurance coverage if permitted by the state Workers Compensation Act, Texas Civil Statutes, Article 8308-1.01, et seq; Texas Civil Statutes, Article 8309b, 8309d, 8309g, 8309g-1, and 8309h, and the Texas Natural Resource Code, §116.036.

COMPRESSED NATURAL GAS (CNG) INSURANCE REQUIREMENTS

<u>CATEGORY OF LICENSE</u>	<u>TYPE OF COVERAGE</u>	<u>INSURANCE POLICY ENDORSEMENT REQUIRED</u>	<u>FORM REQUIRED</u>	<u>STATEMENT IN LIEU OF REQUIRED INSURANCE FILING</u>
ALL	Workers' Compensation, including Employer's Liability	WC42 06 01, Texas Notice of Material Change	CNG Form 1996A	CNG Form 1996B
ALL	Alternative to Workers' Compensation including Employer's Liability, Accident/Health insurance coverage: Medical expenses in the principal amount of not less than \$150,000; Accidental death benefits in the principal amount of not less than \$100,000; Loss of limb or sight on a scale based on the principal amount of not less than \$100,000; Loss of income based on not less than 60% of the employee's pre-injury income for not less than 52 weeks, subject to a maximum weekly benefit equal to the average weekly wage calculated annually by the Texas Employment Commission	N/A	LPG Form 1996A	N/A

CONTINUED ON NEXT PAGE

**COMPRESSED NATURAL GAS (CNG) INSURANCE REQUIREMENTS
CONTINUED**

<u>CATEGORY OF LICENSE</u>	<u>TYPE OF COVERAGE</u>	<u>INSURANCE POLICY ENDORSEMENT REQUIRED</u>	<u>FORM REQUIRED</u>	<u>STATEMENT IN LIEU OF REQUIRED INSURANCE FILING</u>
2, 5, 6	General Liability Coverage including: Premises and operations in an amount not less than: \$25,000 per occurrence \$50,000 aggregate	CG02 05 Texas Changes Amendments or Cancellation Provisions or Coverage Change Endorsement	CNG Form 1998A	CNG Form 1998B
1, 3, 4	Completed operations and products liability in an amount not less than: \$300,000 aggregate	CG02 05 Texas Changes Amendments or Cancellation Provisions or Coverage Change Endorsement	CNG Form 1998A	CNG Form 1998B
3 Ultimate Consumer	Motor Vehicle Coverage: Minimum \$500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	TE0202A Cancellation Provision or Coverage Change Endorsement	CNG Form 1997A	CNG Form 1997B

TABLE 1

Refer to Section 13.61 for a description of each category.
See pages X1 - X67 for blank forms and instructions as to how to complete forms.

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 November 8, 1993

TRD-9331759 Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities/LP
Gas
Railroad Commission of
Texas

Effective date: November 29, 1993

Proposal publication date: September 28, 1993

For further information, please call: (512) 463-6949

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 83. Texas Public School District Insurance Plan

- 34 TAC §§83.1, 83.3, 83.5, 83.7, 83.9, 83.11

The Employees Retirement System of Texas (ERS) adopts the repeal of §§83.1, 83.3, 83.5, 83.7, 83.9, and 83.11, concerning the Texas Public School District Insurance Plan, without changes to the proposed text as published in the July 20, 1993 issue of the *Texas Register* (18 TexReg 4942).

The ERS adopts the repeal in order to be in compliance with Acts of the 73rd Texas Legislature, Regular Session, Senate Bill 1181, which removed the responsibility for the ERS to administer an insurance program for public school employees. The responsibility for future implementation of an insurance program for public school employees has been transferred to the Teacher Retirement System of Texas.

The agency received no comments regarding adoption of the repeal.

The repeal is adopted under the Insurance Code, Article 3.50-2, §4, which provides the Board of Trustees of the ERS with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of the Texas Employees Uniform Group Insurance Benefits Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 9, 1993.

TRD-9331804

Charles D Travis
Executive Director
Employees Retirement
System of Texas

Effective date: November 30, 1993

Proposal publication date: July 20, 1993

For further information, please call: (512) 867-3336

Chapter 87. Deferred Compensation

- 34 TAC §§87.1, 87.5, 87.7, 87.13, 87.19

The Employees Retirement System of Texas (ERS) adopts amendments to §§87.1, 87.5, 87.7, 87.13, and 87.19, concerning the Deferred Compensation Plan. Section 87.5 and §87.7 are adopted with changes to the proposed text as published in the September 17, 1993, issue of the *Texas Register* (18 TexReg 6287). Sections 87.1, 87.13, and 87.19 are adopted without changes and will not be republished.

The amendments are justified in order to clarify the requirements for a member to utilize the "catch-up" provisions, capitalization requirements to be a qualified vendor, use of disclosure forms, and reporting and recordkeeping requirements for vendors.

The amendments will function by allowing members to be better informed regarding the "catch-up" provisions of the deferred compensation plan; and reporting, disclosure, and capitalization requirements will provide additional protection for employees participating in the plan.

The agency received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6252-3g, §2.45, which give the Employees Retirement System of Texas the authority to adopt rules, regulations, plans, and procedures to carry out the purposes of this Act.

§87.5. Participation by Employees.

(a)-(f) (No change.)

(g) Catch-up exception to the normal maximum amount of deferrals.

(1) This subsection provides a limited exception to the normal maximum amount of deferrals.

(2) In the event that a participant chooses to begin the catch-up option, the participant is required to complete and provide the plan administrator with a copy of the catch-up provision agreement form.

(3) In this subsection, the term "normal retirement age" for any participant means a range of ages

(A) beginning with the earli-

est age at which a person may retire under the participant's basic pension plan:

(i) without an actuarial or similar reduction in retirement benefits; and

(ii) without the state's consent for the retirement; and

(B) ending at age 70.5.

(4) If a participant works beyond age 70.5, the normal retirement age for the participant is the age designated by the participant which, in this instance, may not be later than the participant's separation from service.

(5) For any or all of the last three full taxable years ending before the taxable year in which a participant attains normal retirement age, the maximum amount that the participant may defer for each tax year is the lesser of:

(A) \$15,000; or

(B) the sum of:

(i) the normal maximum amount of deferrals; and

(ii) the portion of the normal maximum amount of deferrals that the participant did not use in prior tax years commencing January 1, 1979, provided the participant was eligible to participate in the plan during those years.

(6) This subsection applies only if the participant has not previously used the catch-up exception with respect to a different normal retirement age under the plan or another deferred compensation plan governed by the Internal Revenue Code of 1986, §457.

(7) No participant shall be permitted to participate in any catch-up provision during or after the calendar year in which the participant reaches normal retirement age. If a participant makes deferrals in excess of the normal plan limits under the catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the vendor will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the lesser of \$7,500 or 33-1/3% of includible compensation without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's state agency will reimburse the participant through its payroll system.

(h)-(n) (No change.)

§87.7. Vendor Participation.

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

(c) Eligibility to become a qualified vendor.

(1) Banks. The plan administrator shall disapprove a bank's application to become a qualified vendor if:

(A) (No change.)

(B) the FDIC does not insure deposits with the bank;

(C) the bank is either not well-capitalized or is adequately capitalized but has not obtained a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236 and the related regulations; or

(D) the bank is not a state depository under the Government Code, Chapter 404.

(2) (No change.)

(3) Insurance companies.

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

(C) An insurance company shall report its A.M. Best, Standard and Poors, Moody's, and Duff and Phelps rating information to the plan administrator on an annual basis and shall immediately report any change in its rating in the interim to the plan administrator.

(D) The plan administrator shall disapprove an insurance company's application to become a qualified vendor if the company uses the sex of the person insured or of the recipient to calculate premiums, payments, or benefits for any of its investment products.

(4) Savings and loan associations. The plan administrator shall disapprove a savings and loan association's application to become a qualified vendor if:

(A) (No change.)

(B) the FDIC does not insure deposits with the savings and loan association;

(C) the savings and loan association is either not well-capitalized or is adequately capitalized but has not obtained

a waiver to accept brokered deposits as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Statute 2236 and the related regulations; or

(D) the savings and loan association is not a state depository under the Government Code, Chapter 404.

(5) (No change.)

(d)-(f) (No change.)

(g) Voluntary termination of participation in the plan.

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

(6) When a qualified vendor that is an insurance company voluntarily terminates its participation in the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

(A) (No change.)

(B) A participant whose deferrals and investment income have been invested in a terminated life insurance product may continue life insurance coverage with the insurance company offering the product.

(C)-(D) (No change.)

(E) A participant may exercise the right to continue life insurance coverage only if the participant mails to the insurance company written notice of the participant's intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the company's termination of participation in the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(F) When a participant elects to continue life insurance coverage, the insurance company with which coverage is continuing may not:

(i)-(viii) (No change.)

(G) (No change.)

(H) If a vendor does not comply with subparagraph (G) of this paragraph, then a participant may exercise the right to continue insurance up to the 120th day after the vendor actually mails written notice to the participant, containing a full explanation of the participant's rights.

(h)-(i) (No change.)

(j) Collateralization by banks.

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

(4) Once each quarter, a qualified vendor shall furnish to the plan administrator the following information certified by its chief financial officer:

(A) its current capital category as defined in the Prompt Corrective Action regulations, 12 CFR, Part 325, Subpart B, i.e., well capitalized, adequately capitalized, etc.;

(B) its total capital to risk-weighted assets ratio as defined in the applicable FDIC regulations;

(C) its Tier 1 capital to total book assets ratio as defined in the applicable FDIC regulations;

(D) its Tier 1 capital to risk-weighted ratio;

(E) its most recent Call Report and/or other financial report that can be used to substantiate subparagraphs (A)-(D) of this paragraph; and

(F) if applicable, evidence of a waiver from the FDIC that permits the qualified vendor to accept brokered deposits.

(5) A qualified vendor shall immediately notify the plan administrator if the qualified vendor's capital category changes before its next Call Report or if its waiver from the FDIC with regard to brokered deposits expires, is revoked, or materially changes.

(6) A qualified vendor must collateralize deferrals in accordance with the Government Code, Chapter 404. If a monthly report indicates that a qualified vendor is under-collateralized, the vendor shall immediately pledge additional collateral and comply with the directives of the State Treasury Department and the plan administrator. The plan administrator may suspend or expel an under-collateralized qualified vendor in accordance with §87.21(a)(7) of this title (relating to Remedies).

(7) A qualified vendor may not require a participant to withdraw some or all of the participant's deferrals so that the vendor may avoid the collateralization requirements in the Government Code, Chapter 404. A qualified vendor may not establish a maximum amount of deferrals that a participant may invest in the vendor's qualified investment products.

(8) Notwithstanding a qualified vendor's reinvestment of deferrals and in-

vestment income in investment products offered by the vendor's trust department or by other vendors, the deferrals and investment income are deemed invested in the vendor's qualified investment products for the purpose of this subsection.

(9) The plan administrator, in its discretion, may immediately transfer under-collateralized funds plus any amount reasonably necessary to prevent future under-collateralization. The transfer shall be carried out in accordance with the procedures set forth in §87.15(e) of this title (relating to Transfers). The vendor may not charge the participant a fee or penalty due to a withdrawal of under-collateralized funds.

(k) Collateralization by savings and loan associations.

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

(4) Once each quarter, a qualified vendor shall furnish to the plan administrator the following information certified by its chief financial officer:

(A) its current capital category as defined in the Prompt Corrective Action regulations, 12 CFR, Part 325, Subpart B, i.e., well capitalized, adequately capitalized, etc.;

(B) its total capital to risk-weighted assets ratio as defined in the applicable FDIC regulations;

(C) its Tier 1 capital to total book assets ratio as defined in the applicable FDIC regulations;

(D) its Tier 1 capital to risk-weighted ratio;

(E) its most recent Call Report and/or other financial report that can be used to substantiate subparagraphs (A)-(D) of this paragraph; and

(F) if applicable, evidence of a waiver from the FDIC that permits the qualified vendor to accept brokered deposits.

(5) A qualified vendor shall immediately notify the plan administrator if the qualified vendor's capital category changes before its next Call Report or if its waiver from the FDIC with regard to brokered deposits expires, is revoked, or materially changes.

(6) A qualified vendor must collateralize deferrals in accordance with the Government Code, Chapter 404. If a monthly report indicates that a qualified vendor is under-collateralized, the vendor shall immediately pledge additional collateral and comply with the directives of the State Treasury Department and the plan administrator. The plan administrator may suspend or expel an under-collateralized qualified vendor in accordance with §87.21(a)(7) of this title.

(7) A qualified vendor may not require a participant to withdraw some or all of the participant's deferrals so that the vendor may avoid the collateralization requirements in the Government Code, Chapter 404. A qualified vendor may not establish a maximum amount of deferrals

that a participant may invest in the vendor's qualified investment products.

(8) Notwithstanding a qualified vendor's reinvestment of deferrals and investment income in investment products offered by the vendor's trust department or by other vendors, the deferrals and investment income are deemed invested in the vendor's qualified investment products for the purpose of this subsection.

(9) The plan administrator, in its discretion, may immediately transfer under-collateralized funds plus any amount reasonably necessary to prevent future under-collateralization. The transfer shall be carried out in accordance with the procedures set forth in §87.15(e) of this title. The vendor may not charge the participant a fee or penalty due to a withdrawal of under-collateralized funds.

(l)-(m) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 9, 1993.

TRD-9331803

Charles D. Travis
Executive Director
Employees Retirement
System of Texas

Effective date: January 1, 1994

Proposal publication date: September 17, 1993

For further information, please call: (512) 867-3336

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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 main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Commission on Alcohol and Drug Abuse

Wednesday, November 17, 1993, 9:00 a.m.

710 Brazos, Perry Brooks Building, Eighth Floor Conference Room

Austin

According to the complete agenda, the Grant and Contract Review Committee call to order; unsolicited requests for funds; re-allocation; non-competitive renewal; purchase of service for fiscal year 1994; non-competitive negotiation of awards; information items; schedule of next meeting; and adjourn.

Contact: Steve Casillas or Lynn Brunn-Shank, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8265.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331811

Wednesday, November 17, 1993, 9:00 a.m.

710 Brazos, Perry Brooks Building, Eighth Floor Conference Room

Austin

According to the complete agenda, the Criminal Justice Issues Committee call to order; unsolicited requests for funds; reallocation; non-competitive renewal; purchase of service for fiscal year 1994; non-competitive negotiation of awards; information items; schedule of next meeting; and adjourn.

Contact: Ted Sellers, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8132.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331810

Texas Cosmetology Commission

Friday, November 19, 1993, Noon

5717 Balcones Drive

Austin

According to the complete agenda, the Employee Oversight Committee call to order; introductions; discussion of new rules; discussion of possible legislation requests; enforcement problems; discussion of risk ranking of complaints and inspections; discussion of revision of inspection reports; discussion of how to inspect and enforce commission laws, rules, and regulations; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331808

Saturday, November 20, 1993, 9:00 a.m.

Marriott at the Capitol, 701 East 11th Street
Austin

According to the complete agenda, the Commission call to order; introductions; Suzanne Marshall-Inter-agency contract with Attorney General's Office; Linda York regarding old hours; De Ann Stebbins regarding old hours; George Orsatti regarding publication of newsletter; Charles Oman regarding MIR letter; Diane Hill-License Department report; Elizabeth Perez-School Department report; Tom Ince-Chief Accountant's report; Delores Alspaugh-ADP Supervisor's report; Victor Balderas-Director of Examinations report; Larry

Perkins-Interim Executive Director's report; minutes of previous meetings; practical instructor exam committee report and possible vote; manicure instructor exam committee report and possible vote; facial instructor exam committee report and possible vote; discussion of instructor course in public high schools and possible vote; rules adoptions; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331807

Sunday, November 21, 1993, 9:00 a.m.

Marriott at the Capitol, 701 East 11th Street
Austin

According to the complete agenda, the Chairperson's Advisory Committee call to order; introductions; discussion of inspections; discussion of possible proposed legislation; and adjourn.

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331809

Texas State Board of Dental Examiners

Friday, November 19, 1993, 8:00 a.m.

Guest Quarters Hotel (Houston Room I-Second Floor), 303 West 15th Street

Austin

According to the complete agenda, the board call to order; roll call; approval of past minutes, approval of sedation/anesthe-

sia permits; approval of settlement orders; modification of board orders (Tippit, Sears, Dorris, Bender) ; appearances before the board (Hill, Diebel, Marek, Parmer, Velez, Fourment, Bagwell, Keeling, Keller, Polovina, Roberts, Diais); nominations, discussion, and election of Anesthesia Committee members; discussion of criteria for specialty advisory committee members to hold Texas license; discussion of and appointments to specialty advisory committee; discussion of HIV expert review panel; discussion and appointment of designated dental hygiene exam team for WREB; discussion for compliance with Senate Bill 383-composition of dental hygiene advisory committee; and discussion and consideration of proposed changes to rule 101.7(8).

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower 3, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: November 9, 1993, 12:35 p.m.

TRD-9331777

Friday, November 19, 1993, 3:30 p.m.

Guest Quarters Hotel-Houston Room I, 303 West 15th Street

Austin

According to the complete agenda, the Credentials Review Committee call to order; roll call; approval of past committee minutes; review of and recommendations regarding applications for licensure by credentials; and adjournment.

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower 3, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: November 9, 1993, 12:37 p.m.

TRD-9331778

Saturday, November 20, 1993, 8:00 a.m.

Guest Quarters Hotel (Houston Room I-Second Floor), 303 West 15th Street

Austin

According to the complete agenda, appearances before the Board-review and approval/denial: applicants for licensure by Credentials; public hearing and final adoption of Rule 116.21-Dental Laboratory, Rule 116.22-In House Dental Laboratory, Rule 116.23-Commercial Dental Laboratory, and Rule 116.11-Prosthetic Identification, and amendments to Rule 101.1, and Rule 103.1; reports-presidents report/committee reports/AADA, AADE reports; announcements; and adjournment.

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower 3, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: November 9, 1993, 12:38 p.m.

TRD-9331779

Texas Planning Council for Developmental Disabilities

Thursday-Friday, November 18-19, 1993, 1:30 p.m. and 9:00 a.m. respectively

Embassy Suites Hotel North, 5901 North IH-35

Austin

According to the agenda summary, on Thursday, the Quarterly Council call to order; introductions of council members, staff, and visitors; public comments; approval of minutes of August 13, 1993; chair's report; advocacy and public information committee report; and executive committee report. On Friday, introductions of council members, staff, and visitors; public comments; continuation of unfinished business from Thursday; planning and evaluation committee report; executive director's report; announcements; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: November 10, 1993, 9:38 a.m.

TRD-9331844

Interagency Council on Early Childhood Intervention

Wednesday, November 17, 1993, 9:00 a.m.

4412 Spicewood Springs, Texas Department of Health, Room 201-A

Austin

According to the complete agenda, the council will receive public comments; discuss and possibly act on: the minutes from the meeting of October 20, 1993; presentation of advisory committee and director's forum report; adoption of Early Childhood Intervention (ECI) rules, §621.23 and §621.25; interim report on the personnel study on level of compensation and classification of ECI positions; approval of extension of fiscal year (FY) 1994 contract with Tri-County Mental Health Mental Retardation for early intervention services; technical assistance and training plan for FY 1994; FY 1994 funding plan; annual report on FY 1993 fiscal/program performance; executive director's update; and executive session to discuss performance and compensation for the ECI executive director.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 502-4900. 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: November 9, 1993, 3:56 p.m.

TRD-9331800

Advisory Commission on State Emergency Communications

Friday, November 19, 1993, 9:00 a.m.

15th Street and North Congress Avenue, John H. Reagan Building, Room 104

Austin

According to the complete agenda, the Call Box Task Force Committee will call to order and recognized guests; hear public comments; motorist aid assessment background; motorist aid system briefings; current call box technology; cellular carrier coverage and system issues; ADA compliance; night visibility; rural versus urban systems; response agency operations and system design; system funding options and statewide legislative initiatives; IVHS applications; motorist aid system assessment objectives; motorists aid system implementation issues in Texas; review and consider future action; and adjourn. Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: November 9, 1993, 11:34 a.m.

TRD-9331773

Texas Ethics Commission

Thursday, November 18, 1993, 9:30 a.m.

Reagan Building, 105 West 15th Street, Room 104

Austin

According to the agenda summary, the commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the September 30, 1993, meeting; conduct a briefing, discussion, and possible action regarding project to establish an electronic database under the Government Code, §571.066; public hearing and possible action to adopt the proposed rules that were published in the October 15, 1993, issue of the *Texas*

Register (18 TexReg 6995); public hearing and possible action to repeal all existing rules of the Texas Ethics Commission as proposed, repeal published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 6995); discussion and possible action in response to the Advisory Opinion Requests 186, 187, 188, 189, 192, 193, 194, 196, 197, 198, 199, 202, and 203; and prior to adjournment, retire to executive session to discuss personnel matters, specifically the position of executive director, and possible action on the matter.

Contact: John Steiner, 1101 Camino La Costa, Austin, Texas 78701, (512) 463-5800.

Filed: November 9, 1993, 4:28 p.m.

TRD-9331816

Texas Department of Human Services

Friday, November 19, 1993, 11:00 a.m.

701 West 51st Street, Public Hearing Room
Austin

According to the complete agenda, the Texas Board of Human Services will consider approval of minutes of October 15, 1993, meeting; chairman's comments and announcements; Title IV-A emergency assistance program; child and adult care food program restrictions against early recruitment; revision of compliance procedures for nursing facility and ICF-MR cost reporting requirements; amendments to the licensure rules regarding reports on residents' deaths; revisions to emergency response services program reimbursement methodology; amendments to policies and procedures; FY 1993 and 1994 budget adjustments; commissioner's report including announcements; and comments and tracking of board action items.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3048.

Filed: November 9, 1993, 2:22 p.m.

TRD-9331782

Texas Department of Insurance

Wednesday, November 17, 1993, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

According to the agenda summary, the State Board of Insurance will hold a meeting to consider the following: personnel; litigation; solvency; commissioner's orders; staff re-

ports; filings of commercial multi-peril forms by the following companies: Allstate, Federated Mutual and Federated Service Company, Aetna Casualty and Surety, Lumbermens Mutual Casualty, et al; commercial property forms by: Atlantic Mutual, Hartford Fire, Kansas City Fire and Marine, Lumbermens Mutual Casualty; personal umbrella rate revisions by: United States Automobile Association and USAA Casualty, RLI Insurance Company, Maryland Insurance Company; personal liability umbrella program rate revisions by: State Farm Fire and Casualty, State Farm General; commercial general liability endorsements by: The Continental Insurance Company, Continental Casualty Company, CIGNA, Employers Insurance of Wausau, et al; filing by The Doctor's Company of endorsement for use with Physicians and Surgeons insurance program; Protection Mutual of proposed new standard commercial crime policy endorsements; filing by Department of Banking of new surety bond form; requests for approval of meeting or hearing by Parks and Wildlife Department, Alcohol Beverage Commission, Department of Banking and Department of Transportation of new/revised surety bond form; and a filing by Commercial Union, et al, of homeowner coverage enhancement endorsement, including addition premium for coverage.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6332.

Filed: November 9, 1993, 3:36 p.m.

TRD-9331801

Wednesday, December 1, 1993, 9:00 a.m.

333 Guadalupe Street, Room 100

Austin

According to the complete agenda, the Commissioner of Insurance will hold a public hearing under Docket Number 2074, pursuant to House Bill 1461, 73rd Legislature, 1993, to consider comments pertaining to administrative regulation under the Insurance Code, Article 21.49-1, the Insurance Holding Company System Regulatory Act, amending 28 TAC, Chapter 7, §§7.201, 7.202, 7.205, and 7.210, to provide technical corrections and definitions and clarify requirements for controlling producers and producer controlled property and casualty insurers (essentially brokers in foreign states which control or seek to control a property and casualty insurer in Texas).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6332.

Filed: November 9, 1993, 4:26 p.m.

TRD-9331806

Texas Natural Resource Conservation Commission

Wednesday, November 17, 1993, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 118

Austin

Revised Agenda

According to the agenda summary, the commission will consider the application of American Wastewater Limited for an Emergency Order pursuant to 30 Texas Administrative Code as §305.29 to process grease trap waste not to exceed 50,000 gallons per day at its facility located at 250 Gellhorn, Houston, Harris County (Type V MSW Application Number 2234); (Adrian/Ligarde).

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: November 9, 1993, 11:34 a.m.

TRD-9331775

Thursday, November 18, 1993, 9:30 a.m.

John H. Reagan Building, 105 West 15th Street, Room 106

Austin

Revised Agenda

According to the complete agenda, the Water Well Drillers Advisory Council will meet to discuss and take action on the following: consider approval of minutes of the September 16, 1993, meeting; consider whether to set the following complaints for a formal hearing: Michael Bratson, City of Leander, R. M. Cole, Claude Davis, A. B. English, E. R. English, H. L. Gehrels, Elwyn Gibson, Larry Johnson, Ramon Luna, Jimmy Madewell, Joe Miles, Alton Perry, Leonard Samuels, Dorsey Smith, Jackson Tollett, Luther Townsend, and Eddie Wearden; consider certification of applicants for registration and driller-trainee registration; and consider staff reports.

Contact: Kathy Keils, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: November 9, 1993, 4:00 p.m.

TRD-9331817

Wednesday, December 15, 1993, 11:00 a.m.

San Felipe City Hall-Council Chambers, 4220 Sixth Street

San Felipe

Rescheduled from Thursday, October 28, 1993

According to the agenda summary, the Office of Hearing Examiner will hold a public hearing on application made by Knox Oil of Texas, Inc. for proposed amendment to Permit Number 13381-001 to authorize an in-

crease in flow and change of the method of disposal at plant site located in the City of San Felipe, Austin County.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: November 9, 1993, 2:45 p.m.

TRD-9331795

Texas Political Subdivisions Joint Self-Insurance Funds

Thursday-Friday, November 18-19, 1993,
4:00 p.m. and 8:00 a.m. respectively

110 West Carpenter Freeway

Irving

According to the agenda summary, the Board of Trustees will discuss and act on TPS issues.

Contact: Jennifer Devine, 14135 Midway Road, Suite 300, Dallas, Texas 75244, 1 (800) 588-0013.

Filed: November 9, 1993, 2:29 p.m.

TRD-9331785

Texas Department of Protec- tive and Regulatory Ser- vices

Thursday, November 18, 1993, 8:00 a.m.

701 West 51st Street, Sixth Floor Executive
Conference Room, East Tower

Austin

According to the complete agenda, the Texas Board of Protective and Regulatory Services will participate in a training and work session which will involve a general discussion of policy issues affecting the agency.

Contact: Michael Gee, P.O. Box 149030, Mail Code W-639, Austin, Texas 78714-9030.

Filed: November 9, 1993, 4:59 p.m.

TRD-9331821

Friday, November 19, 1993, 8:00 a.m.
and 10:30 a.m.

Texas Alcoholic Beverage Commission,
Court Room, 5806 Mesa, Suite 1111

Austin

According to the complete agenda, the Texas Board of Protective and Regulatory Services will conduct a work session on the Family Preservation Act beginning at 8:00 a.m. Beginning at 10:30 a.m., the Board will discuss the following agenda items: approval of minutes of October 8, 1993, meeting; excused absences of board mem-

bers; public testimony; chair's comments and announcements; comments and announcements from the board; selection of a consultant for the PRS policy review process; executive director's report on generic advisory committee, out-of-Austin board meeting expenses, and federal funds project update; adoption of amended cost finding methodology for 24-hour child care facilities; adoption of reimbursement rates for 24-hour child care facilities; proposed rule to implement PRS Medicaid targeted case management program; collaboration with DHS to implement a Title IV-A emergency assistance program; and ombudsman office report.

Contact: Michael Gee, P.O. Box 149030, Mail Code W-639, Austin, Texas 78714-9030.

Filed: November 9, 1993, 4:59 p.m.

TRD-9331822

Public Utility Commission of Texas

Friday, November 19, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12457-application of Border to Border Communications, Inc. for approval of local exchange rates and tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 9, 1993, 11:33 a.m.

TRD-9331772

Monday, November 22, 1993, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Commission will hold a prehearing conference in Docket Number 12432-complaint of Glynn A. Pugh against Central Power and Light Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 9, 1993, 4:34 p.m.

TRD-9331818

Monday, November 22, 1993, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Commission will hold a prehearing confer-

ence in Docket Number 12463-application of San Miguel Electric Cooperative, Inc. for authority to implement a rate reduction.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 9, 1993, 4:35 p.m.

TRD-9331819

Thursday, December 2, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Commission will hold a workshop on Project Number 12267, concerning Guidelines and Requirements for FASB 106 Trusts in Hearing Room "A". This workshop is open to the public.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 9, 1993, 2:48 p.m.

TRD-9331841

Texas State Treasury

Friday, November 19, 1993, 10:00 a.m.

200 East Tenth Street, Room 227

Austin

According to the complete agenda, the State Depository Board will discuss approval of minutes from the August 31, 1993, meeting; discussion and grant of final approval of state depository applications; discussion and adoption of changes to 34 TAC 171; and discussion of agenda for the next meeting.

Contact: Susan D. Albers, 200 East Tenth Street, Austin, Texas 78701, (512) 463-5971.

Filed: November 10, 1993, 8:18 a.m.

TRD-9331824

University of Houston

Monday, November 15, 1993, 2:00 p.m.

S&R II, Room 201, University of Houston,
4800 Calhoun Boulevard

Houston

According to the agenda summary, the Animal Care Committee discussed and acted upon the following: approval of October minutes; renewal of protocols; Dr. Middleditch; HVAC update; USDA report; contract with county pound; and January meeting is moved to January 24, 1994, because of Martin L. King Holiday on January 17, 1994.

Contact: Julie T. Norris, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: November 9, 1993, 11:35 a.m.

TRD-9331776

University Interscholastic League

Wednesday, November 10, 1993, 10:00 a.m.

Holiday Inn-Town Lake Hotel, 20 North IH-35

Austin

Emergency Meeting

According to the agenda summary, the State Executive Committee discussed case concerning a report of a violation involving individual contestant at Permian High School in a competition beyond the district.

Reason for Emergency: Case transferred from District Executive Committee November 9, 1993, at 2:30 p.m., findings of State Executive Committee could change representative in State competition.

Contact: C. Ray Daniel, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: November 9, 1993, 4:08 p.m.

TRD-9331802

Texas Water Development Board

Wednesday, November 17, 1993, 3:00 p.m.

Stephen F. Austin Building, Room 513F, 1700 North Congress Avenue

Austin

According to the complete agenda, the Audit Committee will consider approval of the minutes of the meetings of September 15, 1993 and October 21, 1993; will be briefed on the implementation of the auditing and reporting requirements of the Colonia Wastewater Treatment Assistance Program (CWTAAP); on the work performed by the State Auditor's Office; consider revisions to the Audit Committee Responsibility Statement and Internal Audit Charter; will be briefed on current projects in progress; and may discuss items on the agenda of the November 18, 1993, board meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331813

Wednesday, November 17, 1993, 4:00 p.m.

Stephen F. Austin Building, Room 513F, 1700 North Congress Avenue

Austin

According to the complete agenda, the Policy and Finance Committee will consider approval of the minutes of the meeting of October 20, 1993; consider North Alamo Water Supply Corporation (La Sara Colonia) project application; discuss facility engineering and financial assistance applications for El Paso County Lower Valley Water District Authority Phase III project; consider authorizing the Executive Administrator to negotiate and execute contracts for use of up to \$200,000 in board funds to be received from the State Energy Conservation office for the purpose of installing "dry fire hydrants" in rural areas; briefing and discussion on the status of the Oil Overcharge Funds for the Agricultural Water Conservation Loan Program; briefing on present and future EDAP projects; video presentations on three Board-funded projects: Temple-Belton Regional Sewage System's composting facility, Fort Worth Village Creek Wastewater Treatment Plant's expansion, and an update on the Nuevo Laredo International Project, and on the Marketing and Customer Relations Division's activities; and may consider items on the agenda of the November 18, 1993, board meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331814

Texas Workers' Compensation Insurance Fund

Tuesday, November 16, 1993, 7:00 p.m.

Pecan Street Cafe, 310 East Sixth Street
Austin

According to the agenda summary, the Board of Directors will have an informal dinner at 7:00 p.m. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the board of directors of the Fund, certain invited guests, and certain staff of the Fund. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Beth Naylor, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3886.

Filed: November 9, 1993, 4:27 p.m.

TRD-9331812

Regional Meetings

Meetings Filed November 9, 1993

The Appraisal District of Jones County Board of Directors will meet at the District's Office, 1137 East Court Plaza, Anson, November 18, 1993, at 8:30 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9331787.

The Bexar Appraisal District Board of Directors met at 535 South Main Street, San Antonio, November 15, 1993, at 5:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9331815.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, November 16, 1993, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9331774.

The Education Service Center, Region XIII Board of Directors met at ESC, Region XIII-ESC Conference Room 202/203, 5701 Springdale Road, Austin, November 15, 1993, at 12:45 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9331771.

The Gulf Bend MHMR Center Board of Trustees will meet at 1404 Village Drive, Victoria, November 18, 1993, at noon. Information may be obtained from Sron Pratkan, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9331799.

The Johnson County Rural Water Supply Corporation Committee met at the JCRWSC Office, Highway 171 South, Cleburne, November 15, 1993, at 9:00 a.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9331805.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, November 17, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9331784.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, November 18,

1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9331783.



Meetings Filed November 10, 1993

The Central Counties Center for MHMR Services Board of Trustees will meet at 304 South 22nd Street, Temple, November 18, 1993, at 7:45 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9331843.

The Wood County Appraisal District Board of Directors will meet at 217 North Main, Conference Room, Quitman, November 18, 1993, at 7:00 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9331842.



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 the Attorney General Notice of Selection

In accordance with Texas Civil Statute, the Texas Government Code, §2254.030, the Office of the Attorney General (OAG) files this report announcing the award of a contract for consultant services to Coopers & Lybrand, 1155 Peachtree Street, Atlanta, Georgia 30309-3630. The request for proposal was published in the July 16, 1993, issue of the *Texas Register* (18 TexReg 4687). Coopers and Lybrand is to perform a diagnostic evaluation of the efficiency and effectiveness of the OAG's Workers' Compensation Division's organization, staffing, policies, and procedures pertaining to the Management of workers' compensation claims from injured State employees.

The contract is for an amount not to exceed \$40,000. The beginning date of the contract is November 8, 1993, and the ending date is December 22, 1993. The due date for the consultant's report is December 22, 1993.

For further information, please contact David Bolduc, Assistant Attorney General, at (512) 475-0721.

Issued in Austin, Texas, on November 8, 1993.

TRD-9331820 Jerry Benedict
Assistant Attorney General
Office of the Attorney General

Filed: November 9, 1993

State Banking Board Notice of Hearing

The Hearing Officer of the State Banking Board will conduct a hearing on December 13, 1993, at 9:30 a.m., at 2601 North Lamar Boulevard, Austin on the charter application for First Bank of Anna, L.B.A., Anna. The application is a conversion from the First National Bank of Anna, Anna, to a state-chartered bank. The banking services currently provided by The First National Bank of Anna, Anna, will continue to be provided by the First Bank of Anna, L.B.A.

Anyone desiring to appear at the hearing must file a written notice of intent to appear, including a brief statement of position, with this office at least ten days prior to the hearing. A copy of this notice, and all other pleadings, must be sent to each party to the hearing. If no protest is filed at least ten days prior to the date set for the hearing, the Commissioner may cancel the hearing and the State Banking Board shall vote to determine whether the necessary conditions have been established, based on the application. All parties appearing at the hearing are requested to

provide the State Banking Board with three copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

Additional information may be obtained from Lynda A. Drake, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1322.

Issued in Austin, Texas, on November 8, 1993.

TRD-9331788 Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed: November 9, 1993

Comptroller of Public Accounts Notice of Coastal Protection Fee Suspension

The Comptroller of Public Accounts, administering agency for the collection of the Coastal Protection Fee, has received certification from the Commissioner of the General Land Office that the balance in the Coastal Protection Fund has exceeded the maximum amount allowed by law.

Pursuant to the Natural Resource Code, §40.155 and §40.156, the comptroller hereby provides notice of the suspension of the coastal protection fee effective January 1, 1994.

No fee shall be collected or required to be paid on crude oil transferred to or from a marine terminal on or after January 1, 1994, or until notice of the reinstatement of the fee is published in the *Texas Register*.

Inquiries should be directed to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

Issued in Austin, Texas, on November 9, 1993.

TRD-9331769 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Filed: November 9, 1993

Office of Consumer Credit Commissioner Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Articles 1.04, Title 79, as amended (Texas Civil Statutes, Articles 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)	11/15/93-11/21/93	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on November 8, 1993.
 TRD-9331840 Al Endeley
 Consumer Credit Commissioner
 Filed: November 10, 1993

Issued in Austin, Texas, on November 9, 1993.
 TRD-9331786 Susan K. Steeg
 General Counsel
 Texas Department of Health
 Filed: November 9, 1993

◆ ◆ ◆
Texas Department of Health
School Health Program Request for
Proposals

The Texas Department of Health announces the availability of Maternal and Child Health Block Grant funds for the provision of preventive and primary health services to public school populations. Approximately \$1.75 Million is planned for 12-15 programs serving school-age children. Funds are for fiscal year 1994-95, beginning June 1, 1994 and ending May 30, 1995.

Qualifying programs must:

- (1) demonstrate an unmet need for health services in the student population to be served;
- (2) be planned and directed by a local advisory body which includes but is not limited to parents of students served, school administrators, school nurses, local physicians, and representatives of local agencies serving students;
- (3) be supervised and monitored by a physician who has expertise in the care of children and adolescents;
- (4) demonstrate referral linkages for provision of emergency care and other specialized acute and chronic health care services, and mechanisms for the efficient and confidential exchange of medical information among providers; and
- (5) provide assurance that students will not receive services at the school health center unless a parent or guardian executes a consent form approved by the advisory body.

Applicants will be judged on the basis of proposal narratives and budget documents.

The postmark deadline for application is March 1, 1994. Requests for applications and other inquiries should be directed to: School Health Program, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Phone inquiries may be directed to Nancy P. Sisler, R.N., M.S.N. (512) 458-7700.

◆ ◆ ◆
Texas Higher Education Coordinating
Board
Notice of Meeting

The Family Practice Advisory Committee will meet on Thursday, November 18, 1993, from 10:00 a.m.-noon at the Texas Higher Education Coordinating Board offices at 7700 Chevy Chase Drive, Room 1.100, Austin, Texas 78752. The committee will meet to consider criteria for the Physicians Loan Family Practice Residency Programs, and a progress report on the implementation of Senate Bill 426 (Family Practice Residency Pilot Projects). Members of the committee will also be electing their new chairman and Vice-Chairman for Fiscal Year 1994. For further information, please contact Rosa Sanchez at (512) 483-6523.

Issued in Austin, Texas, on November 8, 1993.
 TRD-9331790 Sharon Jahsman
 Administrative Secretary
 Texas Higher Education Coordinating Board
 Filed: November 9, 1993

◆ ◆ ◆
Requests for Proposal

Approximately \$2 million will be available in summer 1994 for improving Texas precollege (K-12) mathematics and science instruction and increasing access of all students to that instruction.

Funds will be competitively distributed in Texas under Title II-A of the federal Dwight D. Eisenhower Mathematics and Science Education Act signed into law by Congress in 1988. The Eisenhower Act reauthorized the predecessor statute, Title II of the Education for Economic Security Act (EESA). Proposals for funding must be submitted by February 28, 1994, to the Texas Higher Education Coordinating Board. Applications are available November 1, 1993.

Approximately 40-50 grants ranging from \$20,000-\$50,000 will be made to support collaborative teacher enhancement and preparation programs between higher education institutions, and local school districts or regional service centers in summer 1994.

The Board will approve recommendations for summer awards at its April meeting. Projects are funded under this

application for five months and must be completed by September 30, 1994.

All public and private colleges and universities are eligible to apply for grants under the Dwight D. Eisenhower Mathematics and Science Higher Education Grants Program.

Issued in Austin, Texas, on November 5, 1993.

TRD-9331791 James McWhorter
Assistant Commissioner
Texas Higher Education Coordinating Board

Filed: November 9, 1993



Approximately \$4 million will be available for 1994-1995 for improving Texas precollege (K-12) mathematics and science instruction and increasing access of all students to that instruction.

Funds will be competitively distributed in Texas under Title II-A of the federal Dwight D. Eisenhower Mathematics and Science Education Act signed into law by Congress in 1988. The Eisenhower Act reauthorized the predecessor statute, Title II of the Education for Economic Security Act (EESA). Under Section 2007(b) of the Eisenhower Act, approximately \$3,200,000 will be available for competitive grants to support unmet teacher inservice and preservice needs in mathematics and science. Under §2007(c), approximately \$800,000 is set aside for cooperative programs among institutions of higher education and school districts, Texas Education Agency, private industry, and nonprofit organizations. Grants for the development and dissemination of projects designed to improve student understanding and performance in science and mathematics will be awarded under Grant Program Category 2007(c). Proposals for funding must be submitted by February 28, 1994, to the Texas Higher Education Coordinating Board. Applications for awards at its July meeting.

The Board will approve recommendations for awards at its July meeting. Projects are funded under this application for 15 months and must be completed by November 30, 1995. All public and private colleges and universities are eligible to apply for grants under the Dwight D. Eisenhower Mathematics and Science Higher Education Grants Program.

For more information, contact Nan Broussard at (512) 483-6224.

Issued in Austin, Texas, on November 5, 1993.

TRD-9331792 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Filed: November 9, 1993



Texas Department of Human Services Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the following programs: Small Level V and VI Community-based Intermediate Care Facilities for the Mentally Retarded (ICFs-MR); ICFs-MR for Persons with Related Conditions; Large Level V, VI and all Level I Community-Based ICFs-MR, including Special Children's Facilities;

Nursing Facilities, Swing Bed, Hospice-Nursing Facilities, and Bienvivir Waiver. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on December 3, 1993, at 9:00 a.m. in the department's public hearing room, 125E, of the John H. Winters Center (701 West 51st Street, Austin, First Floor, East Tower.) Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after November 17, 1993, by contacting Sherri Williams, MC W- 425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Issued in Austin, Texas, on November 10, 1993.

TRD-9331847 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Human Services

Filed: November 10, 1993



Texas Natural Resource Conservation Commission Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Aerospace Technologies, Inc. (SWR Number 34450) on November 2, 1993, assessing \$13,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marianne Baker, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2264.

An agreed enforcement order was entered regarding Betty Carnley doing business as Carnley Mobile Home Park (No Permit) on November 1, 1993, assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kerrie Qualtrough, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2268.

An agreed enforcement order was entered regarding Galveston County WCID Number 12 (Permit Number 12039-01) on November 3, 1993, assessing \$10,000 in administrative penalties with \$2,500 deferred. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Robert Martinez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8098.

An agreed enforcement order was entered regarding the Town of Pecos City (Permit Number 10245-01) on November 1, 1993, assessing \$4,200 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 November 8, 1993.

TRD-9331793

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: November 9, 1993

◆ ◆ ◆
**Notice of Application for Municipal
Solid Waste Management Facility
Permit MSW2213**

Following are Notices of Applications for municipal solid waste permits issued during the period of November 1-5, 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 these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

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 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. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. 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.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application--new permit, amendment, or renewal.

Waste Management of Texas, Inc.; Harker Heights: Type V (transfer station, community drop-off center, recycling) municipal solid waste management facility; on a 17.15 acre site, located at 400 Lookout Ridge Boulevard in Bell County; new; MSW2213.

Issued in Austin, Texas, on November 5, 1993.

TRD-9331768

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: November 9, 1993

◆ ◆ ◆
**Notice of Opportunity to Comment on
Permitting Actions**

The following 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 ten days of the date notice concerning the application(s) is published in the *Texas Register*.

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 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 10 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.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Application by Brazoria County Municipal Utility District Number 1, for a minor amendment to Permit Number 12332-01 to authorize a decrease in the discharge of treated domestic wastewater effluent from a final volume not to exceed 750,000 gallons per day to a final volume not to exceed 500,000 gallons per day. The amendment also deletes the Interim II phase of the existing permit. The wastewater treatment plant is approximately 500 feet north of Marys Creek, approximately 4,800 feet west of FM Road 1128 and approximately 1.2 miles south of FM Road 518 in Brazoria County.

Application by E.I. Du Pont de Nemours and Company for a minor amendment to Permit Number 01651 in order to eliminate an ethylene dichloride wastestream from the

discharge of Outfall 001. The proposed amendment would also relocate the monitoring point of Outfall 001. The permit currently authorizes a discharge of process wastewater and stormwater at a volume not to exceed an average flow of 3,100,000 gallons per day via Outfall 001 and intermittent flow variable discharges of stormwater via Outfall 002, which will remain the same. The proposed amendment will enforce more stringent effluent limitations as needed in order to meet existing applicable rule and regulations. The applicant operates a freon fluorocarbons plant, a freon alternative plant, a cyclohexane plant and caustic chlorine plant. The plant site is on the south side of State Highway 361, approximately three miles southeast of the City of Gregory, San Patricio County.

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

TRD-9331794 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: November 9, 1993

For further information, please call: (512) 463-7898



Public Notice

The Texas Natural Resource Conservation Commission (TNRCC) announces the availability of assistance grants for the purpose of continuing and improving local municipal solid waste enforcement programs.

Only those public agencies which received similar first-year enforcement assistance grants from the Texas Water Commission in 1993 are eligible to apply. The deadline for applying for a grant under this Request for Proposals (RFP) is 5:00 p.m., Wednesday, December 15, 1993. Awards will be made for 12-month projects that are expected to begin January 1, 1994.

In order to be considered for funding, applications must be prepared and submitted in accordance with this published RFP and other printed guidelines available from TNRCC as part of Grant Application Packet Number 94ENF. Please note that a sample contract will be included in the Grant Application Packet in an effort to expedite the negotiation of contracts. This contract represents the conditions under which the TNRCC is willing to grant funds to public agencies for this solid waste enforcing assistance program. Public agency representatives desiring to receive this particular packet are encouraged to call or write Tim Haase at the Texas Natural Resource Conservation Commission (TNRCC), Municipal Solid Waste Division, Compliance and Enforcement Section, at (512) 908-6667 or P.O. Box 13087, Austin, Texas 78711-3087 and request Grant Application Packet Number 94ENF. The purpose of this grant program is to support local government efforts to minimize response and case resolution times with respect to solid waste related citizen complaints; develop or strengthen their solid waste investigative and enforcement capabilities; reduce occurrences of illegal dumping (including the illegal disposal of used automotive oil and/or oil filters, batteries, scrap tires, sludge, septage, and regulated medical waste); and reduce littering.

Applicants eligible to receive funding include Texas cities and counties, city and/or county health departments, local law enforcement agencies, and other public agencies having authority to conduct solid waste-related enforcement activities. Eligible applicants must have authority to carry out activities described in either §361.225, "Suit By

County or Political Subdivision", or §361.226, "Suit by Municipality", in the Solid Waste Disposal Act, the Texas Health and Safety Code, Chapter 361; or to initiate and complete the various enforcement item provisions contained in §65.013 and §365.033 of the Texas Litter Abatement Act, the Texas Health and Safety Code, Chapter 365.

Any proposal from a current recipient of grant funds for a solid waste enforcement program must indicate how, with state funding support, such program is to be improved. It is TNRCC's intention that applicants be able and willing to carry out both investigatory and prosecutory functions related to the overall program objectives. Financial assistance provided by TNRCC shall be matched, at least equally, by funds and/or designated in-kind services to be provided by the grant recipient. Grants awarded under this announced RFP may, at the discretion of TNRCC, be renewed annually (depending on contract performance during the previous year and the continued availability of state funds) for a total award period not to exceed three years. The source of funds for these announced grants is the Municipal Solid Waste Disposal Fee, which is collected by the State of Texas for municipal solid waste disposed of in the State.

Issued in Austin, Texas, on November 10, 1993

TRD-9331846 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: November 10, 1993



North Central Texas Council of Governments

Request for Qualifications

Notification to Secretary of State Information for *Texas Register*.

Consultant Qualifications Request. This request by the North Central Texas Council of Governments (NCTCOG) for consultant qualifications is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG intends to retain the services of an individual consultant or a consultant team to assist in the development of a program design for new household and transit surveys. The actual surveys will be conducted in the fall of 1994 by other consultants and will serve primarily to improve the transportation planning process in the Dallas-Fort Worth Metropolitan Area.

Contract Award Procedures. A Project Review Committee will select consultants for these projects using evaluation criteria and methodology consistent with the scope of services contained in the Request for Qualifications. The NCTCOG Executive Board will review the PRC's recommendation and, if found acceptable, will issue an award of contract.

Regulations. NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code, §200d to §200d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement,

disadvantaged business enterprises will be afforded full opportunity to submit qualifications 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. Qualifications must be submitted no later than 4:00 p.m., Tuesday, November 30, 1993, to Ken Cervenka, P.E., AICP, 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 Qualifications, contact Shirley Henry, (817) 640-3300.

Issued in Austin, Texas, on November 5, 1993.

TRD-9331704 Mike Eastland
Executive Director
North Central Texas Council of
Governments

Filed: November 8, 1993

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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 pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Edinburg Consolidated Independent School District, Edinburg.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Edinburg CISD pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12455.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Edinburg CISD. The geographic service market for this specific service is the Edinburg area.

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 November 8, 1993.

TRD-9331797 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 9, 1993

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Johnson County, Cleburne.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Johnson County pursuant to Public Utility

Commission Substantive Rule 23.27(k). Docket Number 12452.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Johnson County. The geographic service market for this specific service is the Cleburne area.

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 November 8, 1993.

TRD-9331798 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 9, 1993

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for San Antonio Shoe, San Antonio.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for San Antonio Shoe pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12459.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for San Antonio Shoe. The geographic service market for this specific service is the San Antonio area.

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 November 8, 1993.

TRD-9331798 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 9, 1993

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Railroad Commission of Texas

Notice of Intent to Reclaim Abandoned Mine Lands at the Butler Weddington Area 2a Abandoned Uranium Mine in Karnes County, Texas

The Railroad Commission of Texas is submitting a request for funds under Title IV of the Federal Surface Mining Control and Reclamation Act of 1977 (as amended October 1, 1991) to reclaim the Butler Weddington Area 2a abandoned uranium mine near Falls City in Karnes County. The abandoned mine consists of three pits totaling ten acres with approximately 190 acres of spoil piles. The pits contain water to a maximum depth of 40 feet. Poorly vegetated spoil piles consisting of overburden from the pit

remain on this site. Work on the project would be accomplished in accordance with the Texas Abandoned Mine Land Program administered by the Railroad Commission of Texas.

Proposed reclamation of the site would include the following: regrade approximately 190 acres of pit and spoil material; alter to 7H (horizontal); 1V (vertical); fertilize; seed and mulch with grasses. Details of the proposed reclamation plans can be found at the Austin address to follow.

Interested persons are invited to comment on any possible impact this proposed project might have on the area or

community. Comments or inquiries are to be received no later than January 3, 1994 and may be submitted to the following mailing address: Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, Attention: Melvin B. Hodgkiss, P.E., Director.

Issued in Austin, Texas, on November 8, 1993.

TRD-9331839

Mary Ross McDonald
Assistant Director, Legal Division, Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed: November 10, 1993



1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the October-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
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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