

# Texas Register

Volume 18, Number 94, December 17, 1993

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Texas Register



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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions

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

Proposed Sections - sections proposed for adoption

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

Open Meetings - notices of open meetings

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

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

How to Cite. Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 18 (1993) is cited as follows: 18 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

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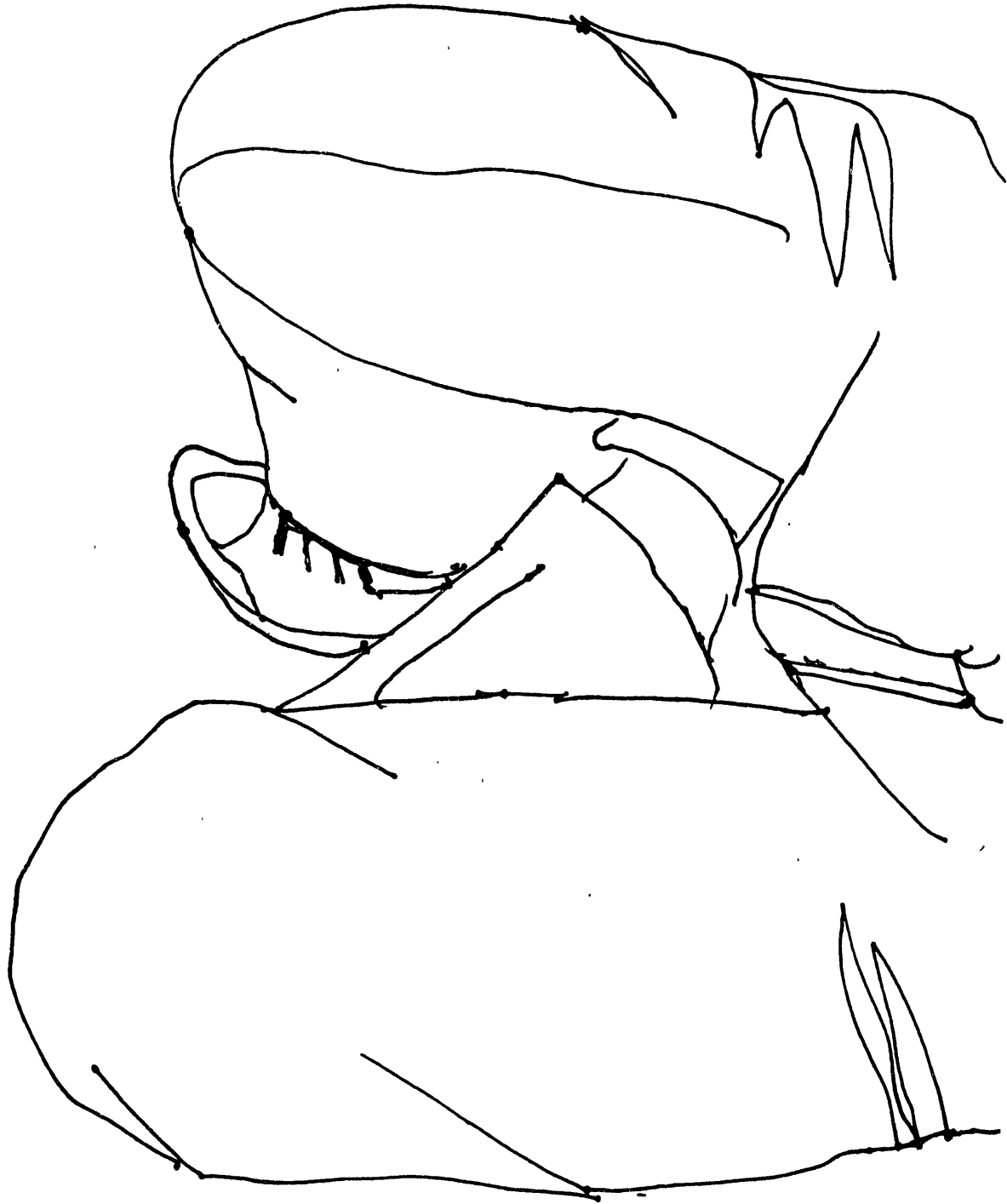
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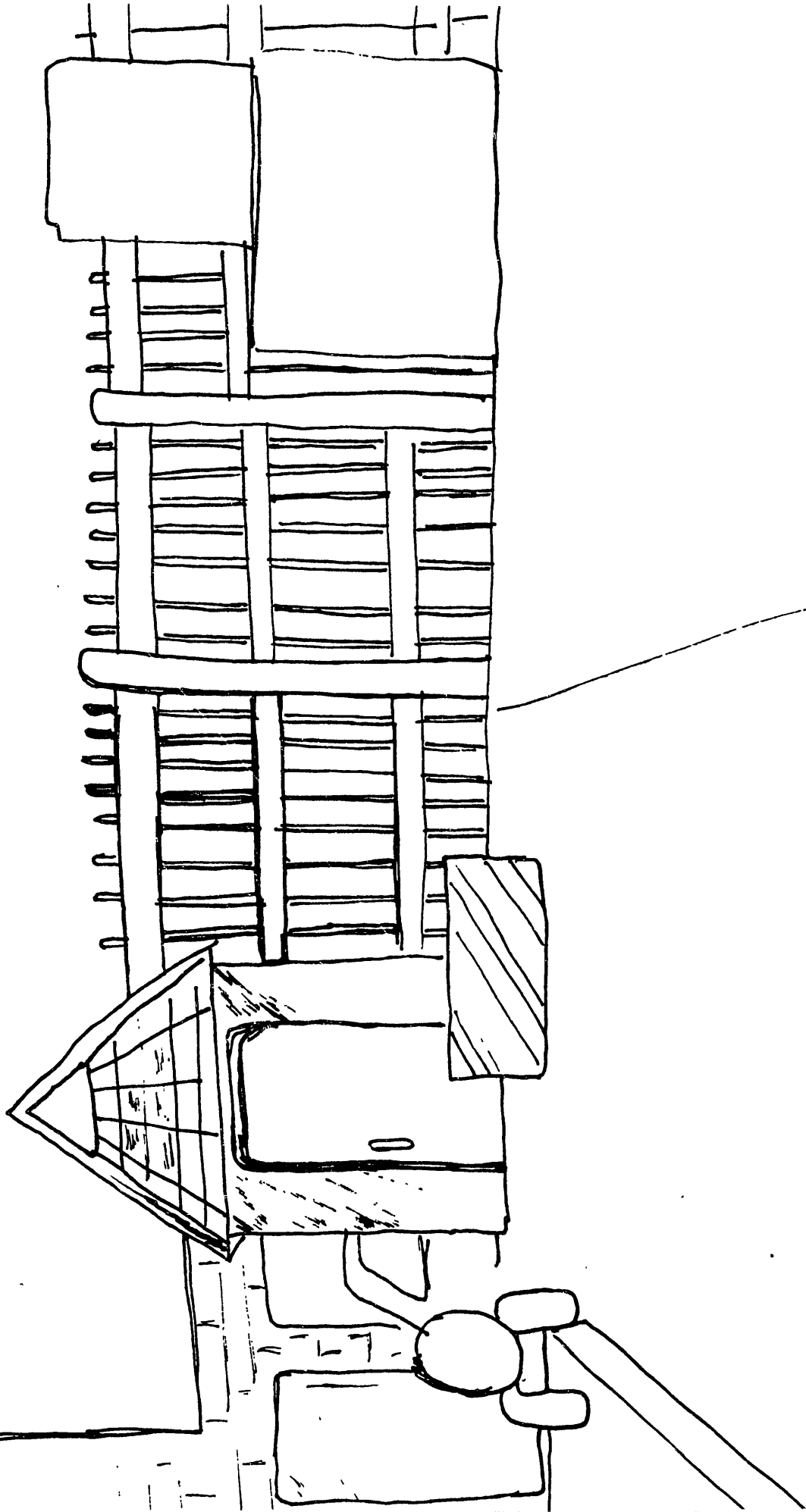
Hips Down

Name: Hooper Kanta

Grade: 12

School: Skyline High School, Dallas, ISD





Name: Jarod Frannea  
Grade: 11  
School: Skyline High School, Dallas ISD





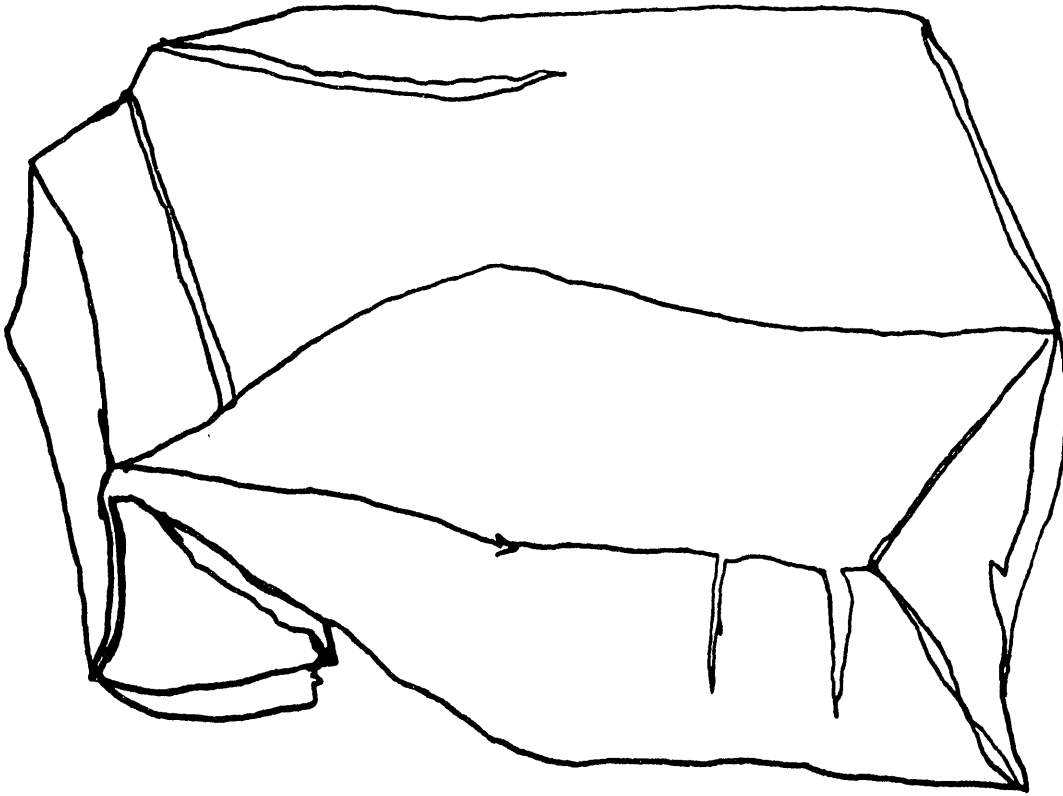
# Contour Entry

10-6-93



Name: Jarod Frannea  
Grade: 11  
School: Skyline High School, Dallas ISD

contour : Bag



Name: Robert Gingrich  
Grade: 9  
School: Skyline High School, Dallas ISD

# The Governor

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

## Appointments Made November 18, 1993

To be a member of the Texas Commission on the Arts for a term to expire August 31, 1999: David R. Durham, 3501 Edgewood Drive, Abilene, Texas 79605. Mr. Durham will be replacing Adair Wakefield Margo of El Paso, whose term expired.

## Appointments Made November 22, 1993

To be a member of the Trinity River Authority of Texas Board of Directors for a term to expire March 15, 1999: William H. McGee, 4529 Versailles, Dallas, Texas 75205. Mr. McGee will be replacing John W. Rhea, Jr. of Dallas, whose term expired.

To be a member of the Texas National Research Laboratory Commission for a term to expire February 31, 1995: Shelton Smith, 347 Knipp, Houston, Texas 77024. Mr. Smith will be filling the unexpired term of Warren G. Woodward of Dallas, who resigned.

To be a member of the Brazos River Authority Board of Directors for a term to expire February 1, 1999: Lee M. Kidd, P.O. Box 1359, Denver City, Texas 79323. Mr. Kidd will be replacing Brad Crawford of Lubbock, whose term expired.

To be a member of the Trinity River Authority of Texas Board of Directors for a term to expire March 15, 1999: Jo Ann Jenkins, P.O. Box 557, Waxahachie, Texas 75165. Ms. Jenkins will be replacing Walter Erwin of Ennis, whose term expired.

## Appointments Made November 23, 1993

To be a member of the Department of Information Resources Board of Directors for a term to expire February 1, 1997: Senator Ken Armbrister, P.O. Box 12068, Austin, Texas 78711. Senator Armbrister was recommended by Lieutenant Governor Bob Bullock to fill the unexpired term of former Senator Temple Dickson.

To be a member of the Educational Economic Policy Center Committee for a term to expire June 1, 1995: Dr. Carolyn Honea Crawford, 299 Manor, Beaumont, Texas 77706. Dr. Crawford will be replacing Charles Miller of Houston, who resigned.

To be a member of the Texas Advisory Board of Occupational Therapy Examiners for a term to expire February 1, 1997: Benny O. McGehee, 1024 Quinault Drive, El Paso, Texas 79912. Mr. McGehee will be filling the unexpired term of Stacy Dinkowitz-Beyer of El Paso, who resigned.

To be a member of the State Employee Charitable Campaign Policy Committee for a term to expire November 22, 1995: Rebecca Lightsey, Assistant General Counsel, Governor's Office, P.O. Box 12428, Austin, Texas 78711. Ms. Lightsey is being appointed to a new position pursuant to House Bill Number 903, 73rd Legislature.

To be a member of the State Employee Charitable Campaign Policy Committee for a term to expire November 22, 1995: Jeffrey J. Guidry, Assistant Professor, Department of Health and Kinesiology, Texas A&M University, College Station, Texas 77843-4243. Mr. Guidry is being appointed to a new position pursuant to House Bill Number 903, 73rd Legislature.

To be a member of the State Employee Charitable Campaign Policy Committee for a term to expire November 22, 1995: Hector Villa III, Regional Manager and Director of Border Affairs, Texas Natural Resource Conservation Commission, 7500 Viscount, Suite 147, El Paso, Texas 79925. Mr. Villa is being appointed to a new position pursuant to House Bill Number 903, 73rd Legislature.

To be a member of the State Employee Charitable Campaign Policy Committee for a term to expire November 22, 1995:

Cathy Brunicardi, Environmental Fund for Texas, 2201 North Lamar Boulevard, Suite 201, Austin, Texas 78705;

Glenn A. Cochran, United Way of Lubbock, 2201 19th Street, Lubbock, Texas 79401;

Winiford N. Dunn, United Way of the Texas Gulf Coast, P.O. Box 924507, Houston, Texas 77292;

Thelma M. Garza, United Way of the Coastal Bend, P.O. Box 9011, Corpus Christi, Texas 78469;

Cleo Glenn-Johnson, Black United Fund of Texas, 5151 Martin Luther King, Jr. Boulevard, Houston, Texas 77021;

David L. Geisbush, National Voluntary Health Agencies of Texas, Inc., 3030 Nacogdoches, Suite 102, San Antonio, Texas

78217;

Thomas Tobin, International Service Agencies, 1400 Rio Grande, Austin, Texas 78701;

John Warren, United Way/Capital Area, P.O. Box 1925, Austin, Texas 78767.

These appointments are being made to new positions pursuant to House Bill Number 903, 73rd Legislature.

To be a member of the Texas Advisory Board of Occupational Therapy Examiners for a term to expire February 1, 1999: M. Judith Lusted, 4003 City View Drive, San Antonio, Texas 78228. Ms. Lusted will be replacing Graciela Garcia of Houston, whose term expired.

## Appointments Made November 29, 1993

To be a member of the Texas Health Benefits Purchasing Cooperative Board for a term to expire February 1, 1997: Marvin L. Ragsdale, Route 5, Box 75 AA, Georgetown, Texas 78626.

To be a member of the Brazos River Authority Board of Directors for a term to expire February 1, 1999: Horace R. Grace, Route 1 Box 25, Mighty Oak Lane, Killeen, Texas 76542. Mr. Grace will be replacing Perry Dalby of Salado, whose term expired.

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

TRD-9333362

Ann W Richards  
Governor of Texas

## Appointments Made December 6, 1993

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1995: Dr. Cheng Ming Chang, 12432 West Avenue, San Antonio, Texas 78216. Dr. Chang is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1999: Dr. Lisa Ping-Hui Lin, 11130 Jollyville Road, Suite 3000, Austin, Texas 78759. Dr. Lin is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to

expire September 1, 1995: William F. Craig, M.D., 6001 I-20 West, Suite 225, Arlington, Texas 76017. Dr. Craig is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1995: Houchi Dung, Ph.D., 7703 Floyd Curl Drive, San Antonio, Texas 78284. Dr. Dung is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1997: The Honorable Gus L. Garcia, P.O. Box 1088, Austin, Texas 78767. Mr. Garcia is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be presiding officer of Texas State Board of Acupuncture Examiners for a term at the pleasure of the Governor: Gus L. Garcia of Austin. Mr. Garcia is being appointed to pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1999: Nancy M. Land, P.O. Box 1075, Crockett, Texas 75835. Ms. Land is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1999: Shen Ping Liang, Ph.D., 1200 Post Oak Boulevard, #516, Houston, Texas 77056. Dr. Liang is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1997: Stephen M. Taylor, D.O., 1200 Summit Avenue, Suite 310, Fort Worth, Texas 76102. Dr. Taylor is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

To be a member of the Texas State Board of Acupuncture Examiners for a term to expire September 1, 1997: Fred Wulf, P.O. Box 981, Center, Texas 75935. Mr. Wulf is being appointed to a new position pursuant to Senate Bill Number 1062, §6.04, 73rd Legislature.

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

TRD-9333296

Ann W. Richards  
Governor of Texas



# 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 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 5. Quarantines

#### Pink Bollworm Quarantine

##### • 4 TAC §5.178, §5.179

The Texas Department of Agriculture (the department) proposes amendments to §5.178 and §5.179, concerning the Pink Bollworm Quarantine. The proposed change to §5.178 will authorize an administrative committee to be formed in a Pink Bollworm Quarantine Zone to advise the department on stalk destruction enforcement. The amendment to §5.179 will establish new destruction methodology for Zone 5.

David Davis, director, Plant Quality Program, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Davis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a reduced need for chemical treatment to control pink bollworm. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on this proposal may be submitted to Darrell Williams, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §74.054, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the control and eradication of the pink bollworm. The code sections that will be affected by the proposal are Texas Agriculture Code, Chapter 74, Subchapter B.

##### §5.178. Quarantine Zones.

(a) An administrative committee shall govern each quarantine zone. The committee shall consist of one authorized representative of the department, one cotton producer from each of the counties in the zone in which cotton production occupies less than 50,000 acres, and two cotton producers from each of the

counties in the zone in which cotton production exceeds 50,000 acres.

(b) The commissioner shall appoint the producer members of the administrative committee for a term of two years expiring on December 31 of the second year, selecting the appointees from a pool of nominees submitted by certified cotton producer organizations as defined in the federal Cotton Research and Promotion Act, §14 (7 United States Code §§2101-2118). Nominees must be an active producer and resident from a county within the proposed zone. A minimum of three nominees must be provided for each producer position on each administrative committee.

(c) The administrative committee of a quarantine zone organized under this section shall:

(1) make recommendations to the department regarding control of the pink bollworm in the zone including recommendations or regulations needed to control and prevent pink bollworm infestation;

(2) make recommendations on any legislative changes that are needed; and

(3) give advice and counsel to the department regarding effective enforcement of this subchapter within the zone.

(d) Quarantine zones shall be as follows:

(1)[(a)] Zone 1. Includes the following counties: Atascosa, Bexar, DeWitt, Frio, Goliad, Karnes, Kinney, Live Oak, Maverick, Medina, Uvalde, Val Verde, Wilson, and Zavala.

(2)[(b)] Zone 2. Includes the following counties: Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington.

(3)[(c)] Zone 3. Includes the following counties: Bastrop, Caldwell, Comal, Guadalupe, Hays, Lee, Travis, and Williamson.

(4)[(d)] Zone 4. Includes the following listed counties: Anderson, Angelina, Bell, Bosque, Brazos, Burleson, Burnet, Coryell, Cherokee, Ellis, Falls,

Freestone, Grimes, Hamilton, Hardin, Henderson, Hill, Hood, Houston, Jasper, Johnson, Lampasas, Leon, Limestone, McLennan, Madison, Milam, Montgomery, Nacogdoches, Navarro, Newton, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Trinity, Tyler, and Walker.

(5)[(e)] Zone 5. Includes the following counties: Pecos, Ward, and Reeves.

##### §5.179. Authorized Planting and Stalk Destruction Dates.

(a) All cotton plants in any of the quarantine zones set forth in §5.178 of this title (relating to Quarantine Zones) must be planted and mechanically destroyed by the authorized planting and stalk destruction deadlines indicated for each zone. This must be accomplished by shredding or plowing out the plants in such a way as to absolutely prevent further growth and to the point where there are no standing cotton stalks or regrowth.

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

(5) Zone 5. Stalk destruction date: on or before February 1.

(A) Destruction shall be accomplished by complete shredding of stalks and turning under all debris by plowing. Plowing shall be performed with an implement which dislodges the root and leaves the soil in a ridged and roughened condition.

(B) Subsequent tillage may be performed if the fields are left in a ridged and roughened condition.

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

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

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

TRD-9333504

Dolores Alavarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: January 17, 1994

## TITLE 7. BANKING AND SECURITIES

### Part VI. Credit Union Department

#### Chapter 91. Chartering, Operations, Mergers, Liquidations

##### Definitions

###### • 7 TAC §91.1

The Credit Union Commission proposes an amendment to §91.1, concerning the definitions of a Credit Union Services Organization.

Robert W. Rogers, commissioner, 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. Rogers also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the definition of a Credit Union Service organization. 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 Penny A. Black, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

**Act**—The Texas Credit Union Act (Texas Civil Statutes, Article 2461-1.01 et seq).

**[Business entity**—Any agency, association, company, network, stock company, mutual association, mutual company, membership association, membership company, partnership, joint venture or trust company.]

**Commission**—The Credit Union Commission.

**Commissioner**—The Credit Union Commissioner.

**Common bond**—A definable community of interest, in accordance with the articles of incorporation or bylaws of the credit union, including a community of interest based on occupation, association, or residence, and may include combinations thereof.

[Control—Holding or owning, directly or indirectly or through one or more subsidiaries, the power to vote, or proxies representing, more than ten percent of the voting shares or rights of any business entity, or the ability to elect or appoint a majority of the directors or trustees of a business entity, or operating as a general partner in or contributing more than ten percent of the capital of a business entity, or acting as a trustee of a business entity which is a trust.]

**CUSO**—An organization [A business entity], the membership or ownership of which is confined or restricted to credit unions and their members or organizations of credit unions, which entity is designed primarily to serve or otherwise assist credit union operations [and of which any one credit union has control].

**Department**—The Credit Union Department.

**Extension of a loan**—Modification of a loan where by the maturity of a note is extended for one calendar month or more. A change of due date is not an extension of a loan if the maturity of a note has been extended less than one calendar month.

**Manufactured home**—A vehicle without automotive power, designed for human habitation and for carrying persons and property upon its own structures and primarily designed for being drawn by a motor vehicle.

**Motor home**—A vehicle with self-contained automotive power designed for human habitation and for carrying persons and property upon its own structure.

**Non-residential improved property**—All improved property not classified as "Residential improved property" consisting of land on which is located any building of a permanent nature (such as an apartment house, office building, hospital, shopping center, ware house, commercial garage, or other similar permanent structure), or any building, lot or site which, by reason of installations and improvements that have been completed in accordance with applicable governmental requirements and with general practice in the community, is a building lot or site ready for the construction of any building of a permanent nature.

**Open-end credit**—Credit extended to or for the benefit of a credit union member on a credit union account pursuant to a plan under which the credit union may permit a member to make purchases or obtain loans, from time to time, directly from the credit union or indirectly by the use of a credit card, draft, or other device, as the plan may provide. The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

**Overlap**—The situation which exists when a group of persons is eligible for membership in two or more state or federal credit unions doing business in this state.

**Person**—An individual, partnership, corporation, association, governmental sub-

division, or public or private organization of any character.

**Property improvement loans**—A loan, the proceeds of which are to be used exclusively for improvement of real property or for the maintenance, repair, modernization, or equipment of real estate.

**Recognizable community**—A geographical area which possesses such characteristics that the residents of the area share a sense of identification with each other which may be based upon mutual interests, goals, community pride or other similar elements.

**Refinancing of a loan**—A modification or renewal of a loan brought about by the execution of a new note, based upon a new application for a loan (with or without additional loan advances or security).

**Residential improved property**—Real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.

**Residents**—Residents include:

(A) all natural persons living or employed in the community;

(B) associations whose memberships are composed of natural persons of whom at least a majority are eligible for membership in the community credit union; and

(C) a proprietorship, partnership, corporation or other legal entity which has its primary place of business located in the community.

**Secured loan**—A loan made upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any such assignment may include interest in personal property or real property or a combination thereof.

**Shares and deposits**—All shares, share accounts, deposit accounts, certificates of deposit, certificates of indebtedness, and notes payable of a credit union.

**Subsidiary**—with respect to any person means a business entity controlled by, or under common control with, that person.

**Title**—The phrase "of this title" refers to Title 7 of the Texas Administrative code (TAC), Banking and Securities. This volume of the TAC contains all of the Credit Union Department's rules.

**TSGCU**—The Texas Share Guaranty Credit Union.

**Unimproved property**—Real property in a raw or natural state.

**Unsecured loan**—A loan upon the general credit financial standing of the borrower. The term shall include loans sup-

ported by the signature of a co-maker, guarantor, or endorser.

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 December 10, 1993.

TRD-9333549 Robert W. Rogers  
Commissioner  
Credit Union Department

Earliest possible date of adoption: January 17, 1994

For further information, please call: (512) 837-9236

## Investments

### • 7 TAC §91.801

The Credit Union Commission proposes an amendment to §91.801, concerning the investment in or granting of loans to a Credit Union Service Organization (CUSO), thereby permitting credit unions to more effectively offer services to their members.

Robert W. Rogers, commissioner, has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

Mr. Rogers, also has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be authority of credit unions to invest in and grant loans to Credit Union Service Organizations which may provide additional services to credit union members.

There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will not be material.

Comments on the proposal will be submitted to Penny A. Black, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under the provisions of Texas Civil Statutes, Article 2461-11.07, which provides the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

#### §91.801. Investments in CUSOs.

(p) A credit union by itself, or with other parties, may invest in or make loans to a CUSO [may make an investment in a CUSO] only after giving at least 15 days' advance written notice to the commissioner of its intention to make such investment or loans. The credit union shall provide any additional information reasonably requested by the commissioner. [Such notice shall include the following:

[(1) the amount or value of the investment;

[(2) a description of the business of the CUSO;

[(3) the names and addresses and titles of the officers and directors of the CUSO;

[(4) a description of the ownership of the CUSO;

[(5) the location of the principal place of business of the CUSO;

[(6) a balance sheet and profit and loss statement of the CUSO for a period ending not more than 90 days prior to the date of the notice; and

[(7) any additional information reasonably requested by the commissioner.]

(b) An investment in any one CUSO shall not exceed the lesser of five percent of the credit union's total assets or the total amount of its reserves and undivided earnings. Loans to any one CUSO shall not exceed the aggregate limit for loans to one member specified by or the Act, §7.02 or a rule adopted under that section. The total aggregate amount of all investments in all CUSOs by any one credit union shall not exceed 10% of the total assets of the credit union, unless the credit union receives the prior written approval of the commissioner.

(c) No credit union may invest in or make loans to [acquire an ownership interest in] a CUSO;

(1) if any officer, director, committee members, or employee of such credit union or any member of the immediate family of such persons owns or makes an investment in the CUSO; [stock of, or acts as a general or limited partner, joint venturer, or trustee of such credit union service organization.]

(2) unless the organization is structured as a corporation, limited liability company, or limited partnership;

(3) if the CUSO provides services or engages in activities not described in this rule or which have not been approved by the commissioner in writing; or

(4) unless prior to investing in or making a loan to a CUSO the credit union obtains a written agreement which requires the CUSO to follow GAAP, render financial statements to the credit union at least quarterly, and provide the department, or its representatives, complete access to the CUSO's books and records at reasonable times without undue interference with the business affairs of the CUSO.

(d) Permissive activities and services of a CUSO include, but are not limited to:

(1) operational services such as credit and debit card services, cash services, wire transfers, audits, ATM and other EFT

services, share draft and check processing and related services, shared service center operations, electronic data processing, development, sale, lease, or servicing of computer hardware and software, loan-related services, and any other services or activity related to the operations of credit unions;

(2) financial services such as financial planning and counseling, securities brokerage and dealer activities, estate planning, tax services, insurance services, administering retirement, deferred compensation and other employee or business benefit plans, or any other service deemed economically beneficial or attractive to the members of the participating credit union or credit unions; or

(3) any other service or activity approved by the commissioner.

[(d) No officer, director, committee member, or employee of a credit union or any member of the immediate family of such persons shall invest in, or act as a general or limited partner or joint venturer in a CUSO in which such credit union has an ownership interest.]

(e) The requirements of this rule apply only to investments or loans made after the effective date of this rule.

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

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

TRD-9333548 Robert W. Rogers  
Commissioner  
Credit Union Department

Earliest possible date of adoption: January 17, 1994

For further information, please call: (512) 837-9236

## TITLE 22. EXAMINING BOARDS

### Part IX. Texas State Board of Medical Examiners

#### Chapter 163. Licensure

##### • 22 TAC §§163.1-163.15

The Texas State Board of Medical Examiners proposes new §§163.1-163.15, concerning licensure requirements for physicians. Changes mandated by the legislature through Senate Bill 1062 required extensive revision of the licensure rules.

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

Mr. Hurwitz, 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 licensing of qualified physicians in an effective and efficient manner. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The new sections are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The proposed new sections affect Texas Civil Statutes, Article 4495b, §§3. 01, 3.03, 3.0305, 3.031, 3.04, 3.05, 3.08, 5.035, and 5.04.

**§163.1. Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

**Ability to communicate in the English language**—An applicant who has passed the Educational Council for Foreign Medical Graduates (ECFMG) English test within three attempts. The Executive Director will review on a case-by-case basis the application of any applicant who did not pass the ECFMG English test within three attempts and it will be at his discretion to evaluate the applicant's eligibility for licensure.

**Acceptable approved medical school**—A medical school or college located in the United States or Canada that was approved by the Board at the time the degree was conferred.

**Acceptable unapproved medical school**—A school or college located outside the United State or Canada that was not approved by the board at the time the degree was conferred but whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board.

**Affiliated Hospital**—Affiliation status of a hospital with a medical school as defined by the Liaison Committee on Medical Education and documented by the medical school in its application for accreditation.

**Applicant**—One who files an application as defined in this section.

**Application**—An application is all documents and information necessary to complete an applicant's request for licensure including the following:

(A) forms furnished by the board, completed by the applicant.

(i) All forms and addenda requiring a written response must be printed in ink.

(ii) Photographs must meet United States Government passport standards;

(B) a fingerprint card, furnished by the board, completed by the applicant, that must be readable by the Texas Department of Public Safety;

(C) all documents required under §163.7 of this title (relating to Licensure Documentation); and

(D) the required fee, payable by check through a United States bank.

**Eligible for licensure in country of graduation**—An applicant who has completed all requirements for licensure in the country in which the medical school is located except for any citizenship requirements.

**Equivalent registration**—An applicant for licensure by endorsement must apply for licensure based upon another state or provincial license that requires as part of its registration:

(A) a form signed by the physician;

(B) a fee; and

(C) periodic registration of a physician's license.

Examinations accepted by the board for licensure by endorsement—

(A) United States Medical Licensing Examination (USMLE), passed within three attempts, with a score of 75 or better on each step, all steps must be passed within seven years;

(B) Federation Licensing Examination (FLEX), after July 1985, passed within three attempts, passage of both components within seven years with a score of 75 or better on each component;

(C) Federation Licensing Examination (FLEX), prior to June 1985, passed within three attempts, with a FLEX weighted average of 75 or better in one sitting;

(D) National Board of Medical Examiners Examination (NBME);

(E) National Board of Osteopathic Medical Examiners Examination (NBOME) ;

(F) Medical Council of Canada Examination (LMCC); and

(G) state board examination (with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico after June 30, 1963) and Special Purpose Examination (SPEX);

(H) one of the following examination combinations, passed within three attempts with a score of 75 or better on each part, component, or step, prior to 1998:

(i) FLEX I plus USMLE 3;

(ii) USMLE 1 and USMLE 2 plus FLEX II;

(iii) NBME I and NBME II plus USMLE 3;

(iv) NBME I or USMLE 1 plus NBME II or USMLE 2 plus NBOME III or USMLE 3;

(v) NBOME I and NBOME II plus USMLE 3; or

(vi) NBOME I or USMLE 1 plus NBOME II or USMLE 2 plus NBOME III or USMLE 3.

Examinations administered by the board for licensure by examination—To be eligible for licensure by examination an applicant must sit for the required examination administered by the board and pass with a score of 75 or better on each part. All steps or components must be passed within seven years. The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE) after December 31, 1993; the Federation Licensing Examination (FLEX), before January 1, 1994; and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

**Full force**—Applicants for licensure by endorsement must possess a license in another jurisdiction which is in full force and not restricted, canceled, suspended, or revoked. A physician with a license in full force may include a physician who does not have a current, active, valid annual permit in another jurisdiction because:

(A) that jurisdiction requires the physician to practice in the jurisdiction before the annual permit is current; or

(B) that jurisdiction requires the physician, prior to practicing in that jurisdiction, to hold a current professional liability insurance policy before the annual permit is current.

**Good professional character**—An applicant for licensure must not be in violation



of or committed any act described in the Medical Practice Act, §3.08.

**Hardship**—The practice of medicine in a Texas county with less than three active full time physicians in the entire county.

**One year training program**—Applicants who are graduates of acceptable approved medical schools must successfully complete one year of post graduate training approved by the Board that is:

(A) accepted for certification by an American Specialty board that is a member of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists; or

(B) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education, or its predecessor;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada; or

(v) the College of Family Physicians of Canada; or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

**Requisite qualifications**—An endorsement applicant who is a graduate of an unapproved acceptable medical school who:

(A) has for the preceding five years been a licensee of another state or a Canadian province;

(B) is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the applicant is licensed to practice medicine; or

(C) is either specialty board certified by a board that is a member of the American Board of Medical Specialties or a specialty board approved by the American Osteopathic Association or successfully passes the Special Purpose Examination (SPEX).

**Sponsor**—A licensed Texas physician who:

(A) holds a current annual registration in this state that is current and in full force;

(B) has no past, present or pending disciplinary matters in any jurisdiction; or

(C) will be on site to supervise a physician who has been issued a temporary license for out-of-state practitioners under the Medical Practice Act, §3.0305.

Substantially equivalent to a Texas medical school—A medical school or college located outside the United States or Canada must be an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; to provide advancement of knowledge through research; to develop programs of graduate medical education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics.

(A) The facilities for basic sciences and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education.

(B) The admissions standards shall be substantially equivalent to a Texas medical school.

(C) The basic sciences curriculum shall include the contemporary content of those expanded disciplines that have been traditionally titled anatomy, biochemistry, physiology, microbiology and immunology, pathology, pharmacology and therapeutics, and preventive medicine, as defined by the Texas Higher Education Coordinating Board.

(D) The fundamental clinical subjects, which shall be offered in the form of required patient-related clerkships, are internal medicine, obstetrics and gynecology, pediatrics, psychiatry, and surgery, as defined by the Texas Higher Education Coordinating Board.

(E) The curriculum shall be of at least 130 weeks in duration.

(F) All allopathic or osteopathic medical education instruction taught in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education and the Council on Postsecondary Accreditation as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States.

**Three-year training program**—Applicants who are graduates of unapproved medical schools must successfully complete three years of postgraduate training in the United States or Canada:

(A) accredited by one of the following:

(i) the Accreditation Council for Graduate Medical Education;

(ii) the American Osteopathic Association;

(iii) the Committee on Accreditation of Preregistration Physician Training Programs, Federation of Provincial Medical Licensing Authorities of Canada;

(iv) the Royal College of Physicians and Surgeons of Canada;

(v) the College of Family Physicians of Canada; and

(vi) all programs approved by the board after August 25, 1984; or

(B) a board-approved program for which a Faculty Temporary License was issued; or

(C) a postresidency program, usually called fellowship, for additional training in a medical specialty or subspecialty in a program approved by the Texas State Board of Medical Examiners.

Unapproved medical school—A school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred.

*§163.2. Licensure by Examination for United States/Canadian Medical School Graduates.*

(a) An applicant, to be eligible for the examination, must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree; and

(4) is a graduate of an acceptable medical school that was approved by the board at the time the degree was conferred.

(b) An applicant, who is a graduate of a medical school located in the United States or Canada, to be eligible for licensure by examination must have:

(1) met all the requirements as outlined in subsection (a) of this section;

(2) passed, within three attempts, an examination administered by the Board for licensure by examination as outlined in §163.8 of this title (relating to Administration of Examinations); and

(3) successfully completed a one-year training program of graduate medical training approved by the board.

*§163.3. Licensure by Examination for Graduates of Unapproved Foreign Medical Schools.*

(a) An applicant, to be eligible for the examination, must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts or a bachelor of science degree;

(4) is a graduate of a school whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;

(5) has graduated from an acceptable unapproved medical school that is substantially equivalent to a Texas medical school;

(6) has successfully completed a three-year training program of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;

(7) is eligible for licensure in the country of graduation;

(8) possesses a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(9) has the ability to communicate in the English language; and

(10) has supplied all additional information, that the board may require, concerning the applicant's medical school, before approving the applicant.

(b) An applicant, to be eligible for licensure by examination, must have:

(1) met all the requirements as outlined in subsection (a) of this section; and

(2) passed, within three attempts, an examination administered by the Board, for licensure by examination, as outlined in §163.8 of this title (relating to Administration of Examinations).

*§163.4. Licensure by Endorsement for United States/Canadian Medical School Graduates.* An applicant, to be eligible for licensure by endorsement, must:

(1) be 21 years of age;

(2) be of good professional character;

(3) have completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;

(4) be a graduate of an acceptable approved medical school;

(5) have successfully completed a one-year training program of graduate medical training approved by the Board;

(6) submit evidence of passing, within three attempts, an examination, acceptable by the Board for licensure by endorsement;

(7) pass the Texas Medical Jurisprudence Examination with a score of 75 or better;

(8) hold a license in another state/province that is substantially equivalent to licensure in Texas and in whose registration requirements are equivalent; and

(9) be endorsed by another state or province, on a form provided by this state. The endorsement must state that the medical license is current and in full force and has not been restricted, canceled, revoked, or suspended.

*§163.5. Licensure by Endorsement for Graduates of Unapproved Foreign Medical Schools.* An applicant, to be eligible for licensure by endorsement, must:

(1) be 21 years of age;

(2) be of good professional character;

(3) have completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;

(4) be a graduate of a school whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;

(5) be a graduate of an acceptable unapproved medical school that is substantially equivalent to a Texas medical school;

(6) have successfully completed a three-year training program of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;

(7) submit evidence of passing, within three attempts, an examination, acceptable by the Board for licensure by endorsement;

(8) pass the Texas Medical Jurisprudence Examination with a score of 75 or better;

(9) hold a license in another state/province, that is substantially equivalent to licensure in Texas and in whose registration requirements are equivalent;

(10) be endorsed by another state or province, on a form provided by this state. The endorsement must state that the medical license is current and in full force and has not been restricted, canceled, revoked, or suspended;

(11) be eligible for licensure in country of graduation;

(12) possesses a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(13) have the ability to communicate in the English language; and

(14) have supplied all additional information that the board may require concerning the applicant's medical school.

*§163.6. Procedural Rules for Licensure Applicants.*

(a) Applicants for licensure:

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(2) whose application for licensure which has been filed with the board

office and which is in excess of two years old from the date of receipt, shall be considered inactive. Any fee previously submitted with that application shall be forfeited. Any further application procedure for licensure will require submission of a new application and inclusion of the current licensure fee. All examination fees will be forfeited if the applicant fails to complete the application 60 days prior to the applicant's scheduled examination date or if the applicant fails to appear for the scheduled examination;

(3) will be allowed to sit for the Texas medical jurisprudence examination only three times. After the third failure of the Texas medical jurisprudence examination, and after each subsequent failure, an applicant for licensure shall be required to appear before a committee of the board to address the applicant's inability to pass the Texas medical jurisprudence examination and to re-evaluate the applicant's eligibility for licensure;

(4) who in any way falsify the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be allowed to sit for the examination or be issued a Texas license;

(5) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be allowed to sit for the examination or be issued a Texas license;

(6) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application and fee are filed with the board;

(7) may be required to sit for additional oral or written examinations that, in the opinion of the board, are necessary to determine competency of the applicant;

(8) must have the application for licensure complete in every detail 60 days prior to the board meeting in which they are considered for licensure. Applicants may qualify for a Temporary License prior to

being considered by the board for licensure, as required by §163.9 of this title (relating to Temporary Licensure-Regular); and

(9) who previously held a Texas medical license may be required to complete additional forms as required.

(b) Applicants for licensure by examination:

(1) who are graduates of acceptable approved medical schools, may sit for the examination prior to complying with the one year graduate training requirement;

(2) who are graduates of unapproved medical schools, may sit for the examination after the completion of their 36th month of approved graduate training;

(3) must apply for and sit the required examination in this state. The examination may be taken for a total of three attempts;

(4) whose application is received by the board between August 1 and January 31 will be scheduled to sit for the following June examination. Applications for licensure by examination received by the board between February 1 and July 31 will be scheduled to sit for the following December examination. Applications must be complete in every detail 60 days prior to the examination before an applicant will be admitted to the examination; and

(5) who wish to request reasonable accommodations, due to a disability, must submit the request upon filing the application.

(c) Applicants for licensure by endorsement:

(1) are required to complete an oath swearing that:

(A) the license certificate under which the applicant has most recently practiced medicine in the state or Canadian province from which the applicant is transferring to this state or in the uniformed service in which the applicant served is in

full force and not restricted, canceled, suspended, or revoked;

(B) the applicant is the identical person to the certificate or diploma was issued;

(C) no proceedings have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of the certificate, license, or authority to practice medicine in the state, Canadian province, or uniformed service of the United States in which it was issued; and

(D) no prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony.

(2) who have not been examined for licensure in a ten-year period prior to the filing date of the application must have passed Day III or Component II of the FLEX prior to June 1988, or SPEX, unless the applicant has obtained:

(A) specialty certification, recertification, or an examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists within the preceding ten years; or

(B) through extraordinary circumstances, unique training equal to the training required for specialty certification as determined by a committee of the board and approved by the board;

(3) who are required to sit for a SPEX exam, will be scheduled for the examination, unless otherwise notified, based on the date the board receives their application. Applications must be complete in every detail 60 days prior to the examination before an applicant will be admitted to the examination.

<u>Application filed between:</u>	<u>will be scheduled for the:</u>
Feb 1 and Apr 30	Sep SPEX
May 1 and Jul 31	Dec SPEX
Aug 1 and Oct 31	Mar SPEX
Nov 1 and Jan 31	Jun SPEX

Applications must be complete in every detail 60 days prior to the examination before an applicant will be admitted to the examination.

#### §163.7. Licensure Documentation.

(a) An applicant must appear for a

personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not

limited to, those listed in subsections (b)-(d) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of either a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to this board for all examinations used in Texas or another state for licensure.

(4) Dean's Certification. Each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided by the board. The applicant shall attach a recent photograph, meeting United States Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(5) Medical Diploma. All applicants for licensure must submit a copy of their medical diploma.

(6) Evaluations. All applicants must provide evaluations, on a form provided by the board, of their professional affiliations for the past ten years or since graduation from medical school, whichever is the shorter period.

(7) Premedical School Transcript. Each applicant must submit a copy of the record of his or her undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) Medical School Transcript. Each applicant must have his or her medical school submit a transcript of courses taken and grades obtained.

(9) National Practitioner Data Bank (NPDB). Each applicant must contact the NPDB and have a report of action submitted directly to the board on the applicant's behalf.

(10) Federation of State Medical Boards History Report. Each applicant must contact the Federation of State Medical Boards and have a history report submitted directly to the board on the applicant's behalf.

(11) Physician's Profile. Each applicant must have a "Physician's Profile" report submitted directly to the board on the applicant's behalf from:

(A) American Medical Association; or

(B) American Osteopathic Association.

(12) National Credentials Verification Service (NCVS). Each applicant that has contracted with NCVS to provide verification of documents may request that a copy of the NCVS file be submitted directly to the board.

(13) Fingerprint Card. Each applicant must complete a fingerprint card and return to the board as part of the application.

(14) Graduate Training Verification. Each applicant must submit a certificate showing successful completion of required training. The certificate must show the beginning and ending dates of the program and state that the program was successfully completed. An applicant may have the Program Director of the program in which the applicant trained submit a letter, addressed to this board, submitted directly to this board stating the beginning and ending dates of the program and attesting to successful completion.

(15) Temporary License Affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(16) Additional Photograph. Applicants required to sit for the FLEX, USMLE, or SPEX examinations must submit a recent photograph that meets United States Government passport standards.

(c) Applicants for licensure by endorsement must satisfy the appropriate requirements listed in subsections (a) and (b) of this section.

(1) Endorsement. Each applicant for licensure by endorsement must have a state or province endorse him or her to this board. The endorsement must indicate that the license is current and in full force and that it has not been restricted, canceled, suspended, or revoked. Each endorsement must indicate the basis of licensure (by endorsement or examination) or the applicant must request that the endorsing state submit a letter to this board stating the basis of licensure. The endorsing board should include a description of any sanctions imposed by or disciplinary matters pending in the state or Canadian province.

(2) State License Registration. Each applicant must submit a copy of a certificate issued by the state which is endorsing him or her to this board. The certificate must show the license number and date of expiration of the current registration.

(3) Specialty Board Certification. Each applicant that has obtained certification by a board that is a member of the American Board of Medical Specialties or the American Osteopathic Association must submit a copy of the certificate issued by the member showing board certification.

(4) Continuing Medical Education (CME). Each applicant must provide copies of certificates showing completion of at least equal to the number of CME hours required by the endorsing state.

(5) Medical License Verifications. Each applicant will have every state, excluding the state that is endorsing him or her to this board, in which he or she has ever been licensed, regardless of the current status of the license, submit on his or her behalf, directly to this board a letter verifying the status of the license and any a description of any sanctions or pending disciplinary matters.

(d) Applicants for licensure by examination who are graduates of unapproved foreign medical schools must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section. Applicants for licensure by endorsement who are graduates of unapproved foreign medical schools must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a)-(c) of this section. The required documents are as follows.

(1) Educational Commission for Foreign Medical Graduates (ECFMG) certificate. Applicants must submit a copy of a valid ECFMG certificate unless they have completed a Fifth Pathway program;

(2) Educational Commission for Foreign Medical Graduates (ECFMG) interim certificate. Each applicant that has completed a Fifth Pathway program must

submit a copy of his or her ECFMG interim certificate.

(3) Educational Commission for Foreign Medical Graduates (ECFMG) Examination History Report. Each applicant must request that ECFMG furnish directly to this board a report of the number of examinations taken by the applicant leading to ECFMG certification, the result of each examination, and the type of examination taken.

(4) Unique Documentation. The board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education.

(5) Certificate of Registration. Each applicant must provide a copy of his or her certificate to practice in the country in which his or her medical school is located. If a certificate is unavailable, a letter, submitted directly to this board, from the body governing licensure of physicians in the country in which the school is located, will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement, a letter attesting to this, submitted directly to this board, will be required.

(6) Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education. The form will require the name of the clerkship, where the clerkship was located (name of hospital and location of hospital) and dates of the clerkship.

(e) Applicants may be required to submit other documentation, which may include the following.

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document.

(2) Arrest Records. If an applicant has ever been arrested a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) Malpractice. If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must have the following submitted:

(A) have each medical liability carrier complete a form furnished by this

board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit have the attorney representing the applicant in each suit submit a letter directly to this board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided;

(C) a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(4) Inpatient Treatment for Alcohol/Substance Abuse or Mental Illness. Each applicant that has been admitted to an inpatient facility within the last ten years for the treatment of alcohol/substance abuse or mental illness must submit the following:

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) an admitting summary and discharge summary, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended;

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) Outpatient Treatment for Alcohol/Substance Abuse or Mental Illness. Each applicant that has been treated on an outpatient basis within the last ten years for alcohol/substance abuse or mental illness must submit the following:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure must be submitted.

(7) A copy of the DD214 indicating separation from any branch of the United States military must be submitted.

(f) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

#### *§163.8. Administration of Examinations.*

(a) The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE) after December 31, 1993; the Federation Licensing Examination (FLEX) before January 1, 1994; the Special Purpose Examination (SPEX); and the Texas medical jurisprudence examination in writing, at times and places as designated by the board.

(b) An examinee shall not be permitted to bring medical books, compends, notes, medical journals, calculators, or other help into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner; nor be allowed to leave the examination room except when so permitted by the presiding examiner.

(c) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination or to invalidate the applicant's examination results or to take other appropriate action.

(d) All USMLE Step 3, FLEX, and SPEX questions and answers, with grades attached, shall be preserved for at least one year at the National Board of Medical Examiners offices.

(e) An applicant shall not be eligible to sit for the FLEX, SPEX, or Texas medical jurisprudence examinations until the application is complete; and until the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

(f) An applicant shall not be eligible to sit for the USMLE Step 3 examination until:

- (1) the application is complete;
- (2) the applicant has passed:

(A) the USMLE Step 1 and USMLE Step 2 examinations with a grade of 75 or better on each step within three attempts; or

(B) FLEX Component I with a grade of 75 or better within three attempts; or

(C) the 1991 NBME Comprehensive I and USMLE Step 2 examinations with a grade of 75 or better on each step and part within three attempts; and

(3) the applicant has made a personal appearance to have his or her required original documents inspected by a representative of the board.

*§163.9. Temporary Licensure-Regular.*

(a) The executive director of the board may issue a temporary license to an endorsement applicant:

(1) who holds a valid license in another state or Canadian province on the basis of an examination required for licensure in Texas;

(2) who has passed the Texas medical jurisprudence examination;

(3) whose completed application has been filed, processed, and found to be in order; and

(4) who has met all other requirements for licensure, except passage of SPEX if required for licensure.

(b) The executive director of the board may issued a temporary license to an examination applicant:

(1) who has passed the examination administered by the board;

(2) who has passed the Texas medical jurisprudence examination;

(3) whose completed application has been filed, processed, and found to be in order; and

(4) who has met all other requirements for licensure.

(c) Each applicant shall receive only one temporary license prior to the issuance of a permanent license. The Board, in unusual circumstances, may allow the issuance of one additional temporary license if it finds it is in the best interest of the public and that the health and welfare of the public would not be endangered, but would be served. These exceptions are reviewed by the executive director on a case-by-case basis.

*§163.10. Distinguished Professors Temporary License.*

(a) The executive director of the board may issue a distinguished professors temporary license to an endorsement applicant:

(1) who holds a substantially equivalent state license in another state or Canadian province on the basis of an examination accepted by the board for licensure by endorsement;

(2) who has passed the Texas medical jurisprudence examination;

(3) whose application has been filed, processed, and found to be in order. The application shall be complete in every detail except that the applicant will not be required to have taken and passed the SPEX examination as set forth in §163.1 of this title (relating to Licensure Definitions);

(4) who holds an appointment as a salaried full professor on the faculty working full-time in one of the following institutions:

(A) University of Texas Medical Branch at Galveston;

(B) University of Texas Health Science Center at Dallas;

(C) University of Texas Health Science Center at Houston;

(D) University of Texas Health Science Center at San Antonio;

(E) University of Texas Health Center at Tyler;

(F) University of Texas M.D. Anderson Cancer Center;

(G) Texas A&M School of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) University of North Texas Health Science Center at Fort Worth.

(b) The distinguished professors temporary license shall be requested by the institution as defined in subsection (a)(4) of this section and shall be valid only in the institution or its affiliated hospitals.

(c) The distinguished professors temporary license shall be valid for a continuous one-year period; however, the permit is revocable at any time the board deems necessary. The distinguished professors temporary license shall automatically expire one year after the date of issuance. The distinguished professors temporary license is renewable one time, at the discretion of the executive director.

(d) At the conclusion of this one-year period, the distinguished professor shall present recommendations in his or her behalf from the chief administrative officer and the president of the institution, and shall petition the board for a permanent, unrestricted license to practice medicine in Texas. If this petition is denied, the institution may request a one-year extension of the distinguished professors temporary license. If an extension is granted, and following termination of such extension, the distinguished professor shall again present recommendations from the chief administrative officer and the president of the institution and re-petition the board for a permanent, unrestricted license to practice medicine in Texas. If the petition is again denied, no further distinguished professors temporary license shall be issued.

(e) If the board grants the petition for licensure, the distinguished professor may be issued a permanent, unrestricted license.

*§163.11. State Health Agency Permit.*

(a) An endorsement applicant may elect to apply for a state health agency permit in lieu of licensure granted by endorsement.

(1) The executive director of the board may issue such a permit to an applicant:

(A) who holds a valid license in another state or Canadian province on the basis of an examination, that was passed within three attempts, that is accepted by the board for licensure by endorsement;

(B) who has passed the Texas medical jurisprudence examination;

(C) whose application has been filed, processed, and found to be in order. The application shall be complete in every detail with the exception of compliance with §163.6(j) of this title (relating to Procedural Rules for all Licensure Applicants); and

(D) who holds a salaried, administrative, or clinical position with an agency of the State of Texas.

(2) The state health agency permit shall be requested by the chief administrative officer of the employing state agency and shall be issued exclusively to that agency. The chief administrative officer shall state whether the permit is for a:

(A) clinical position. This permit will be valid for a one-year period from the date of issuance and will not be renewable. The permit is revocable at any time the board deems necessary. To practice beyond one year, the holder of the permit must fully comply with §163.6(j) of this title (relating to Procedural Rules for all Licensure Applicants). During the period that the state health agency clinical permit is in effect, the physician will be supervised by a licensed staff physician who will regularly review the permit holder's skill and performance. This permit will be marked "clinical"; or

(B) administrative non-clinical position. This permit will be valid for a one-year period from the date of issuance; however, it is revocable at any time the board deems necessary. The permit shall automatically expire one year after the date of issuance but may be re-issued annually at the request of the chief administrative officer of the employing state agency and at the discretion of the Texas State Board of Medical Examiners. The holder of a state health agency permit, not designated as clinical, shall not practice medicine as that term is defined in Texas Civil Statutes, Article 4495b, §1.03(8)(A) and (B). This permit will be marked "administrative."

#### §163.12. Relicensure.

(a) If a physician's license has been expired for one year, it is considered to have been canceled, and the physician may not renew the license. The physician may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an original license.

(1) The examinations required by this section are:

(A) the Texas jurisprudence examination; and

(B) SPEX, unless the applicant has passed a licensure examination or has obtained specialty certification, recertification, or passed an examination of continued demonstration of qualifications by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists within the preceding 10 years.

(2) The additional requirements for this new license shall be as required within the following sections:

(A) §163.2 of this title (relating to Licensure by Examination for United States and Canadian Medical School Graduates);

(B) §163.3 of this title (relating to Licensure by Examination for Graduates of Unapproved Foreign Medical Schools);

(C) §163.4 of this title (relating to Licensure by Endorsement for United States/Canadian Medical School Graduates);

(D) §163.5 of this title (relating to Licensure by Endorsement for Graduates of Unapproved Foreign Medical Schools);

(E) §163.6 of this title (relating to Procedural Rules for all Licensure Applicants); and

(F) §163.7 of this title (relating to Licensure Documentation).

(b) A person may qualify for renewal of his or her original license without reexamination if that person:

(1) held a license previously in this state;

(2) moved to another state;

(3) practiced in that other state for not more than two years since the expiration of his or her Texas license; and

(4) files an application for relicensure under subsection (a)(3) of this section.

#### §163.13. Medical Practice Act Section 3.0305 Temporary License for Out-of-State Practitioners.

(a) Applicants for a Section 3.0305 Temporary License for Out-of-State Practitioners:

(1) must have on file with the board the application;

(2) must have a current, active, and unrestricted license, without any pending disciplinary matters, as a physician 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 this Act;

(3) must have passed an examination accepted by the board for licensure by endorsement;

(4) must be sponsored by a person licensed by the board under this Act

with whom the temporary license holder may practice under this section.

(b) An applicant for a temporary license may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with subsection (a)(4) of this section constitutes a hardship to the applicant.

(c) A Section 3.0305 Temporary License for Out-of-State Practitioners is valid until the date the board approves or denies the temporary license for an out-of-state practitioner's application for a license. The board shall issue a license under this section to the holder of the temporary license under this section if:

(1) the temporary license holder passes the examination required by the Medical Practice Act, §3.05;

(2) the board verifies that the temporary license holder has satisfied the academic and experience requirements for a license;

(3) the temporary license-holder has satisfied all other requirements for licensure as prescribed by §163.4 of this title (relating to Licensure by Endorsement for United States/Canadian Medical School Graduates), §163.5 of this title (relating to Licensure by Endorsement for Graduates of Unapproved Foreign Medical Schools), §163.6 of this title (relating to Procedural Rules for all Licensure Applicants), and §163.7 of this title (relating to Licensure Documentation).

(d) The board must assemble the documents and information necessary to process an out-of-state practitioner, who holds a temporary license under this section, application for a license not later than the 90th day after the date the temporary license for an out-of-state practitioner is issued, and complete the processing of the application not later than the 90th day after the date the documents and information are assembled. If, by the 180th day after the date the temporary license for the out-of-state practitioner under this section is issued, the board has not completed the processing of the application, the Reciprocity Committee shall review the application to determine the cause of the delay.

#### §163.14. Licensure by Endorsement for the Fifth Pathway.

An applicant who has completed a Fifth Pathway Program to be eligible for licensure by endorsement must:

(1) be at least 21 years of age;

(2) be of good professional character;

(3) have completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The

University of Texas at Austin for credit on a bachelor of arts or a bachelor of science degree;

(4) have completed all of the didactic work of the foreign medical school, whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board, but has not graduated from an unapproved acceptable medical school;

(5) have completed all of the didactic work of the foreign medical school, that is substantially equivalent to a Texas medical school, but has not graduated from an acceptable unapproved medical school;

(6) have successfully completed a three-year training program of graduate medical education in the United States or Canada that was approved by the board on the date the training was completed;

(7) submit evidence of passing an examination, within three attempts, that is acceptable to the Board for licensure by endorsement;

(8) pass the Texas Medical Jurisprudence Examination with a score of 75 or better;

(9) hold a license in another state/province, in which the applicant most recently practiced that is substantially equivalent to licensure in Texas and in whose registration requirements are equivalent;

(10) be endorsed, on a form provided by this state, by the state in which the applicant has most recently practiced. The endorsement must state that the medical license is current and in full force and has not been restricted, canceled, revoked, or suspended;

(11) submit a sworn affidavit that no proceedings, past or current, have been instituted against the applicant before any state medical board, provincial medical board, in any military jurisdiction or federal facility;

(12) have attained a passing score on the ECFMG examination;

(13) have the ability to communicate in the English language;

(14) have completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program); and

(15) have supplied all additional information, that the board may require, concerning the applicants' medical school, before approving the applicant.

*§163.15. Licensure by Examination for the Fifth Pathway.*

(a) An applicant who has completed a Fifth Pathway Program to be eligible for the examination must present satisfactory proof to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character;

(3) has completed 60 semester hours of college courses other than in medical school, which courses would be acceptable, at the time of completion, to The University of Texas at Austin for credit on a bachelor of arts or a bachelor of science degree;

(4) has completed all of the didactic work of the foreign medical school, whose curriculum meets the requirements for an acceptable unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board, but has not graduated from an unapproved acceptable medical school;

(5) has completed all of the didactic work of the foreign medical school, that is substantially equivalent to a Texas medical school, but has not graduated from an acceptable unapproved medical school;

(6) has successfully completed three years of graduate medical training in the United States or Canada that was approved by the board on the date the training was completed;

(7) has attained a passing score on the ECFMG examination;

(8) has the ability to communicate in the English language;

(9) has completed one academic year of supervised clinical training for foreign medical students as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program); and

(10) has supplied all additional information that the board may require concerning the applicant's medical school before approving the applicant.

(b) An applicant who has completed a Fifth Pathway Program to be eligible for licensure by examination must have:

(1) met all the requirements as outlined in subsection (a) of this section; and

(2) passed an examination administered by the Board within three attempts as outlined in §163.8 of this title (relating to Administration of Examinations).

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

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

TRD-9333573

Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: January 17, 1994

For further information, please call: (512) 834-7728, Ext. 402

◆ ◆ ◆  
**Part XXXV. Texas State  
Board of Examiners of  
Marriage and Family  
Therapists**

**Chapter 801. Licensure and  
Regulation of Marriage and  
Family Therapists**

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes new §§801.1, 801.2, 801.11-801.20, 801.41-801.54, 801. 71-801.73, 801.91-801.93, 801.111-801.114, 801.141-144, 801.171-801.174, 801. 201 - 801.204, 801.231-801.237, 801.261-801.268, 801.291-801.298, 801.331, 801. 332, 801.351, and 801.361-801.369, concerning licensure as licensed marriage and family therapists. These sections define terms commonly used in the profession; set the standards for licensure as a licensed marriage and family therapist; establish procedures for application, examination, licensure, and continuing education; and provide procedures for denial, revocation, or suspension of a license. These sections are proposed to define what an individual must do to become licensed as a marriage and family therapist. Specifically, the sections cover definitions, the board, code of ethics, application procedures, criteria for determining fitness of applicants for examination and licensure, experience requirements for examination and licensure, licensure examinations, issuance of licenses, licensure renewal and inactive status, continuing education requirements, complaints and violations, licensing persons with criminal backgrounds, informal dispositions, and formal hearings.

The new sections replace existing Chapter 128 under Title 25, Health Services, because Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425) which amends Texas Civil Statutes, Article 4512c-1, provide the board with the authority to adopt rules independently (without the Board of Health approval). In addition, these sections have additions or changes in order to comply with amendments to Texas Civil Statutes, Article 4512c-1 (Senate Bill 1425): §801.2 adds definitions of Administrative Procedure Act (APA), board, completed application, contested case, family systems, group supervision, individual supervision, investiga-



tion, license, marriage and family therapist intern, and recognized religious practitioner, and expands the definition of supervisor; §801.11 relates to governor appointment of chair, election of vice chair, training program available to board; §801.12 relates to petition for the adoption of a rule; §801.19 relates to fees, late renewal fee change, addition of temporary and provisional licensure fees, and notification that business and personal checks will not be accepted; §801.42 adds criteria which relates to the rendering of professional therapeutic services; §801.114 clarifies the minimum number of courses required in a substantially equivalent degree; §801.174 changes wording to independent testing professional; §801.204 relates to temporary licenses; §801.263 relates to continuing education hour requirements; §801.264 relates to types of acceptable continuing education; §801.265 relates to continuing education procedures; §801.266 relates to criteria for approval of continuing education activities, §801.267 relates to determination of clock-hour credits; §801.291 relates to complaints and violations; §801.296 relates to complaint procedures; §801.297 relates to monitoring of licensees; §801.298 relates to default orders; §801.332 relates to criminal convictions, §801.351 relates to informal dispositions.

In accordance with Senate Bill 210, the board proposes the addition of the following sections: §801.45 relating to sexual misconduct; §801.293 sets out the procedures for revoking, suspending, probating or denying a license, or reprimanding a licensee.

Bobby D. Schmidt, executive director, Marriage and Family Therapy Program, has determined that for the first five-year period that the sections are in effect there will be fiscal implications as a result of administering these sections as proposed. The effect on state government will be an estimated additional cost of \$163,345 each year for fiscal years 1994-1996. There will be an estimated increase in revenue equal to the additional cost amounts for those fiscal years which will compensate for the additional expenditures. There will be no fiscal implications for local governments.

Mr. Schmidt also has determined that for each year of the first five years that the proposed sections are in effect the public benefits anticipated as a result of enforcing these sections will be that the regulation of licensed marriage and family therapists will safeguard public health, safety, and welfare by providing a means by which the public can identify providers of marriage and family therapy services that meet minimum standards of competence. There will be no cost to small businesses to comply with the new sections. The anticipated economic cost to persons who are required to comply with these sections as proposed will be \$40 per year. There will be no effect on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, Marriage and Family Therapy Program, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6657. Comments will be accepted for 30 days after publication in the *Texas Register*. In addition public hearings will be held in Abilene, Texas, on Monday, January

10, 1994, at 10:00 a.m., Abilene Christian College, College of Biblical Studies Building, Room 202 (Dean's Conference Room), and a public hearing to be held in Austin, Texas, on Monday, January 18, 1994, 10:00 a.m., at the Texas Department of Health, Exchange Building, S-400, 8407 Wall Street.

## Subchapter A. Introduction

### • 22 TAC §801.1, §801.2

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

*§801.1. Purpose.* The purpose of this chapter is to implement the provisions in the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1, concerning the licensure and regulation of marriage and family therapists.

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

**Act**—The Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, Texas Civil Statutes, Article 4512c-1.

**APA**—The Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

**Board**—The Texas State Board of Examiners of Marriage and Family Therapists.

**Completed application**—The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria set out in §801.73 of this title (relating to Required Application Materials).

**Contested case**—A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

**Department**—The Texas Department of Health.

**Family systems**—An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychological characteristics of its indi-

vidual members (age, race, nationality, gender, fertility, health and temperament) and its sociocultural and historic position in its larger environment.

**Formal hearing**—A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

**Group supervision**—Supervision that involves a minimum of three and no more than six marriage and family therapy supervisors in a clinical setting during the supervision hour. A supervision hour is sixty minutes.

**Hearing examiner**—An attorney duly designated and appointed by the chairperson of the board or the commissioner of health who conducts hearings under this chapter on behalf of the board.

**Individual supervision**—Supervision of no more than two marriage and family therapy supervisees in a clinical setting during the supervision hour. A supervision hour is sixty minutes.

**Intern**—See definition of marriage and family therapist intern

**Investigator**—A professional complaint investigator employed by the Texas Department of Health.

**License**—A marriage and family therapist license, a temporary marriage and family therapist license, or a provisional marriage and therapist license.

**Licensed Marriage and Family Therapist**—An individual who offers to provide marriage and family therapy for compensation

**Licensee**—Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists

**Marriage and Family Therapist Intern**—A person who holds a temporary license issued by the Texas State Board of Examiners of Marriage and Family Therapists to practice marriage and family therapy under the supervision of a board-approved supervisor.

**Marriage and family therapy**—The rendering of professional therapeutic services to individuals, families, or married couples, singly or in groups, and involves the professional application of family systems, theories, and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction within the context of marriage or family systems.

**Month**—A calendar month.

**Party**—Each person, governmental agency, or officer or employee of a governmental agency named by the hearing examiner as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

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

Pleading—Any written allegation filed by a party concerning its claim or position

Regionally accredited institutions—An institution accredited by one of the following accreditation associations will be accepted for licensing purposes: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of School and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.

Recognized religious practitioner—A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26 Code of Federal Regulations 16033-2, subsection (g)(5)(i), (1982);

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary, and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

Rules—The rules in this chapter covering the designated policies and procedures of operation for the board and for individuals affected by the Act.

Supervision—The guidance or management of an individual or group in a clinical setting.

Supervisor—A person approved by the board as meeting the requirements set out in §801.143 of this title (relating to Supervisor Requirements), to supervise a licensed marriage and family therapist and/or marriage and family therapist intern.

Texas Open Meetings Act—Government Code, Chapter 551.

Texas Open Records Act—Government Code, Chapter 552

Therapist—For purposes of this chapter, a Texas licensed marriage and family therapist

Waiver—The suspension of educational, professional, and/or examination requirements for applicants who meet the

criteria for licensure under special conditions.

Year—A calendar year.

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 December 9, 1993.

TRD-9333404

Bobby Schmidt  
Executive Director  
Texas State Board of  
Examiners of Marriage  
and Family Therapists

Proposed date of adoption: January 28, 1994

For further information, please call. (512) 834-6657

## Subchapter B. The Board

### • 22 TAC §§801.11-801.20

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

The sections affect Texas Civil Statutes, Article 4512c-1

#### §801.11. The Board.

(a) Membership. The Texas State Board of Examiners of Marriage and Family Therapists (board) is composed of nine members appointed by the governor. Four members must be selected from the general public. Five members must be eligible for licensure under the Licensed Marriage and Family Therapist Act (Act), at least one of whom must be a professional educator in marriage and family therapy. These members must have engaged in the practice or education of marriage and family therapy for at least five years, or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) Terms. Members of the board hold office for staggered six-year terms. Three members' terms expire February 1 of each odd-numbered year.

(c) Vacancies. In the event of a vacancy, the governor shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

(d) Elections. At the meeting held nearest to August 31 of each year, the board shall elect a vice-chair by a majority vote of the members present

(e) Officers.

(1) Chair. The chair shall be appointed by the governor and will serve at the will of the governor.

(A) The chair shall preside at all meetings at which he or she is in attendance and shall perform all duties prescribed by law and board rules.

(B) The chair is authorized by the board to make minor procedural decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board. The executive director shall keep a tabulation of the minor procedural decisions and include them in the executive director's report to the board.

(C) The chair shall sign the approved minutes of each meeting.

(2) Vice-Chair.

(A) The vice-chair shall perform the duties of the chair in the absence or disability of the chair.

(B) Should the office of the chair become vacant, the vice-chair shall serve until a successor is named.

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees appointed by the chair shall consist of no more than four members and shall make regular reports to the board by interim written reports or at regular meetings. The board shall direct all such reports to the executive director for distribution.

(g) Compensation. No member of the board may receive compensation for serving on the board. Each member is entitled to the per diem set by legislature for each day that the member performs functions as a member of the board.

(h) Meetings.

(1) Agendas.

(A) The executive director or the executive director's designee shall prepare and submit to each member of the board an agenda which includes items required by law, items requested by members, and other matters of board business which have been approved by the chair.

(B) The official agenda of a board meeting shall be filed with the Texas Secretary of State as required by the Texas Open Meetings Act.

(C) Any individual wishing to be on the agenda to present or speak on a specified topic at a meeting of the board must provide a written request to the chair which describes the topic to be addressed.

The chair may limit as appropriate the time for public participation.

(2) Frequency of meetings. The board shall meet at least biannually and may meet at other times as the chair deems necessary. All meetings shall be conducted in accordance with the Texas Open Meetings Act.

(3) Attendance. If a member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during the calendar year, unless the absence is excused by majority vote of the board, a potential ground for removal from the board may exist. The chair shall notify the governor that a potential ground for removal exists. The attendance records of the members may be made available to the governor of the State of Texas and/or the Texas Sunset Advisory Commission.

(4) Rules of parliamentary procedure. All official decisions made by the board shall be made according to parliamentary procedure as set forth in the latest edition of Robert's Rules of Order Revised. If a question arises concerning interpretation of the latest edition of Robert's Rules of Order Revised, the chair, or acting chair will make the decision.

(5) Transaction of official business. The board may transact official business only when it is a legally constituted meeting with a quorum present. Five members of the board constitute a quorum.

(i) The board shall not be bound in any way by any statement or action on the part of any board member, subcommittee member, or staff member, except when a statement or action is in pursuance of the specific instruction of the board.

(j) Training. A training program shall be available for the members of the board. At least one training course of this program must be completed before a member of the board may assume duties on the board.

#### §801.12. *Petition for the Adoption of a Rule.*

(a) Purpose. The purpose of this section is to delineate the Texas State Board of Examiners of Marriage and Family Therapists (board) procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and telephone number; and shall contain the following:

(A) a brief explanation of and justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the proposed rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition shall be filed with the board office.

(4) The executive director or the executive director's designee may determine that the petition does not contain the information described in paragraph (2) of this subsection and return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rule-making procedures in accordance with the Administrative Procedure Act (APA), §2001.021. The board may deny parts of the petition or institute rule-making procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider a subsequent petition for the adoption of the same or similar rule submitted within six months after the date of an initial petition.

#### §801.13. *Executive Director.*

(a) The commissioner of health shall appoint an employee of the Texas

Department of Health as executive director for the board after consultation with the board members.

(b) The executive director shall keep the minutes of the meetings and proceedings of the Texas State Board of Examiners of Marriage and Family Therapists (board) and shall be the custodian of the files and records of the board.

(c) The executive director shall exercise general supervision over individuals employed in the administration of the Licensed Marriage and Family Therapists Act (Act), at the direction of the board or the commissioner of health.

(d) The executive director shall be responsible for the preliminary information regarding complaints and for the presentation of the formal complaints to the board. A committee may be appointed for extensive investigation.

(e) The executive director shall handle all correspondence for the board and obtain, assemble, or prepare reports and information that the board may modify or authorize.

(f) The executive director or the executive director's designee shall have the responsibility of assembling and reviewing materials submitted by applicants for licensure. Determinations made by the executive director or the executive director's designee are subject to the approval and/or modification of the board, which shall make the final decision regarding the eligibility of the applicants.

(g) The executive director or the executive director's designee may serve as the administrator of licensure examinations, as directed by the board or the commissioner of health.

(h) The executive director shall sign the approved minutes of each meeting.

#### §801.14. *Official Records.*

(a) All official records of the Texas State Board of Examiners of Marriage and Family Therapists (board), except files containing information considered confidential under the provisions of the Texas Open Records Act, shall be open for public inspection during regular office hours.

(b) A person desiring to examine official records shall be required to identify himself or herself and sign statements listing the records requested and examined.

(c) Official records shall not be taken from board offices; however, persons may obtain copies of files upon written request and by paying the cost per page set by the State Purchasing and General Services Commission and the Texas Department of Health.

**§801.15. Impartiality and Non-discrimination.**

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, sex, national origin, age, or disability.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or specialty or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

**§801.16. Policy on Disabled Applicants.**

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) recognizes that disabled applicants may encounter unusual problems in applying for licensure or taking the examination and will make an effort to accommodate these applicants.

(b) The board, on an individual basis, may consider requests for special arrangements for disabled applicants including assistance in taking the examination provided that such requests are reasonable and do not violate this Licensed Marriage and Family Therapist Act (Act) or this chapter.

**§801.17. License Certificate.**

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) shall prepare and provide to each therapist a license certificate which contains the licensee's name and license number.

(b) Any license certificate issued by the board remains the property of the board and must be surrendered to the board if the license is suspended or revoked or wrongfully issued.

**§801.18. Directory.**

(a) Each year the Texas State Board of Examiners of Marriage and Family Therapists (board) shall publish a directory of therapists.

(b) The directory shall include, but not be limited to, the name, preferred mailing address, and telephone number(s) of current licensees.

(c) The board shall make a copy of the directory available to each licensee, and upon request, shall provide copies to other state agencies and the public.

**§801.19. Fees.**

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act).

(b) The schedule of fees shall be as follows:

- (1) application fee-\$30;
- (2) licensure examination fee-\$125;
- (3) licensure fee-\$36;
- (4) renewal fee-\$30;
- (5) late renewal fee-late renewal fees shall be set as follows:

(A) on or before 90 days-renewal fee plus one-half of the examination fee (\$92.50);

(B) longer than 90 days but less than one year-renewal fee plus fee equal to the examination fee (\$185);

- (6) inactive status (administrative) fee-\$75;
- (7) duplicate license fee-\$10;
- (8) temporary licensure fee-\$60; and
- (9) provisional licensure fee-\$30.

(c) All fees are non-refundable.

(d) Remittances submitted to the board in payment of fees must be in the form of a cashier's check or money order. Personal and/or business checks will not be accepted.

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. All fee changes shall be made through rulemaking procedures.

**§801.20. Processing Applications.**

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) shall evaluate each completed application and other documentation submitted upon payment of an application fee.

(b) The board shall notify each applicant whether the completed application has been accepted or denied not later than the 30th day before the date of the examination.

(c) Within 30 days of receipt of an application from a person seeking licensure,

the executive director or the executive director's designee shall notify the applicant of any deficiencies that exist.

(d) Applicants approved to take the examination shall be sent a notice of the time and manner of conducting the examination and the acts required of the applicant in connection with the examination.

(e) A notice that an application is denied must state the reason for the denial.

(f) The board is not responsible for lost, misdirected, or undelivered correspondence if sent to the address last reported to the board.

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 December 9, 1993.

TRD-9333405

Bobby Schmidt  
Executive Director  
Texas State Board of  
Examiners of Marriage  
and Family Therapists

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

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**Subchapter C. Rendering Professional Therapeutic Services and Code of Ethics**

**• 22 TAC §§801.41-801.54**

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

**§801.41. Purpose and Scope.**

(a) The purpose of this subchapter is to provide guidelines regarding the rendering of professional therapeutic services and to implement the provisions of the Licensed Marriage and Family Therapists Act (Act), concerning a code of ethics.

(b) The scope of this subchapter establishes standards of professional and ethical conduct required of a therapist.

**§801.42. Rendering Professional Therapeutic Services.** The rendering of professional therapeutic services may include but is not restricted to the following:

- (1) marriage therapy which utilizes systems, methods, and processes

which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve resolution of problems associated with cohabitation and interdependence of adults living as couples through the changing marriage life cycle. These family system approaches assist to stabilize and alleviate mental, emotional, or behavioral dysfunctions of either partner;

(2) sex therapy which utilizes systems, methods, and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies in the resolution of sexual disorders;

(3) family therapy which utilizes systems, methods, and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective, and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions of a family member;

(4) child therapy which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional, or behavioral dysfunctions of a child;

(5) play therapy which utilizes systems, methods, and processes which include: play and play media as the child's natural medium of self-expression, and verbal tracking of the child's play behaviors as part of the therapist's role in helping children overcome their social, emotional, and mental problems;

(6) individual psychotherapy which utilizes systems, methods, and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies to achieve mental, emotional, physical, social, moral, educational, spiritual, and career development and adjustment through the developmental life span. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions in an individual;

(7) divorce therapy which utilizes systems, methods, and processes which include: interpersonal, cognitive,

cognitive-behavioral, developmental, psychodynamic, affective and family systems methods and strategies with families to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment through the changing family life cycle. These family system approaches assist in stabilizing and alleviating mental, emotional or behavioral dysfunctions of the partners;

(8) family mediation which is a mediated divorce settlement in which the couple is assisted in negotiating a marital settlement outside of a courtroom. The therapist functions as a facilitator and problem solver. The therapist helps with legal issues involving children and custody situations. It often involves helping couples resolve property issues. Mediation calls on therapeutic skills which help stabilize the divorcing couple's relationship so that they can work in a cooperative problem solving effort for an amicable separation. Legal knowledge by the therapist is required. Special training for mediation work is required;

(9) group therapy-which utilizes systems, methods, and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve mental, emotional, physical, moral, educational, spiritual, and career development and adjustment throughout the life span;

(10) chemical dependency counseling-which utilizes systems methods and processes which include interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies, and 12-step methods to achieve abstinence from the addictive substances and behaviors by the client;

(11) rehabilitation therapy-which utilizes systems, methods, and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to achieve adjustment to a disabling condition and to reintegrate the individual into the mainstream of society;

(12) referral counseling-which utilizes systems, methods, and processes which include: evaluating and identifying needs of clients to determine the advisability of referral to other specialists, and informing the client of such judgment and communicating as requested or deemed appropriate to such referral sources. This includes social studies and family assessments of the individual within the family;

(13) diagnostic assessment-which utilizes the knowledge organized in the diagnostic and statistical manual of mental disorders (DSM) as well as the international classification of diseases (ICD) as part of their therapeutic role to

help individuals identify their emotional, mental, and behavioral problems when necessary;

(14) psychotherapy-which utilizes systems, methods, and processes which include: interpersonal, cognitive, cognitive-behavioral, developmental, psychodynamic, and affective methods and strategies to assist clients in their efforts to recover from mental or emotional illness;

(15) hypnotherapy-which utilizes systems, methods, and processes which include the principles of hypnosis and post-hypnotic suggestion in the treatment of mental and emotional disorders and addictions;

(16) biofeedback-which utilizes systems, methods, and processes which include electronic equipment to monitor and provide feedback regarding the individual's physiological responses to stress. The therapist who uses biofeedback must be able to prove academic preparation and supervision in the use of the equipment as a part of the therapist's academic program or the substantial equivalent provided through continuing education;

(17) assessing and appraising-which utilizes systems, methods, and processes which include formal and informal instruments and procedures, for which the therapist has received appropriate training and supervision in individual and group settings for the purposes of determining the client's strengths and weaknesses, mental condition, emotional stability, intellectual ability, interests, aptitudes, achievement level and other personal characteristics for a better understanding of human behavior, and for diagnosing mental problems; and

(18) consulting-which utilizes systems methods and processes which include the application of specific principles and procedures in consulting to provide assistance in understanding and solving current or potential problems that the consultee may have in relation to a third party, whether individuals, groups, or organizations.

#### *§801.43. Professional Representation.*

(a) A therapist shall not misrepresent any professional qualifications or associations.

(b) A therapist shall not misrepresent any agency or organization by presenting it as having attributes which it does not possess.

(c) A therapist shall not make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the efficacy of any services.

(d) A therapist shall not encourage, or within the therapist's power allow, a

client to hold exaggerated ideas about the efficacy of services provided by the therapist.

(e) A therapist shall not discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, or sexual orientation.

#### §801.44. Relationships with Clients.

(a) A therapist shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship.

(b) A therapist shall inform the client of the purposes, goals, techniques, rules of procedure, and limitations that may affect the relationship at or before the time that the therapeutic relationship is entered.

(c) No commission or rebate or any other form of remuneration shall be given or received by a therapist for the referral of clients for professional services.

(d) A therapist shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

(e) Under normal circumstances a therapist shall not be involved in the therapy of family members, intimate friends, close associates, or others whose welfare might be jeopardized by such a dual relationship.

(f) Under normal circumstances a therapist shall not offer professional services to a person concurrently receiving therapy from another professional except with the knowledge of that professional.

(g) A therapist shall personally take reasonable action to inform responsible authorities and appropriate individuals in cases where a client's condition indicates a clear and imminent danger to the client or others.

(h) In group therapy settings, the therapist shall take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(i) A therapist shall not engage in activities that seek to meet the therapist's personal needs at the expense of a client.

(j) A therapist shall keep accurate records of therapeutic services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of five years.

(k) A therapist shall bill clients or third parties for only those services actually rendered or as agreed to by mutual under-

standing at the beginning of services or as later modified by mutual agreement. Supervisory relationships between a therapist and any other person used by the therapist to provide services to a client shall be clearly explained to the client and shall be so reflected on billing documents.

(l) A therapist shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it.

#### §801.45. Sexual Misconduct.

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

(1) Mental health services—The assessment, diagnosis, treatment, or counseling in a professional relationship to assist an individual or group in:

(A) alleviating mental or emotional illness, symptoms, conditions, or disorders, including alcohol or drug addiction;

(B) understanding conscious or subconscious motivations;

(C) resolving emotional, attitudinal, or relationship conflicts; or

(D) modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning.

(2) Mental health services provider—A licensee or any other licensed or unlicensed individual who performs or purports to perform mental health services, including a licensee under the provisions of Texas Civil Statutes, Article 4512c-1.

(3) Sexual contact:

(A) deviate sexual intercourse as defined by §21.01, Penal Code;

(B) sexual contact as defined by §21.01, Penal Code;

(C) sexual intercourse as defined by §21.01, Penal Code; or

(D) requests by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(4) Sexual exploitation—A pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual

abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(5) Therapeutic deception—A representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's therapy.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a person who is:

(1) a client or former client;

(2) a marriage and family therapist intern supervised by the licensee, or a person who has been a marriage and family therapist intern within the past two years; or

(3) a student at an educational institution at which the licensee provides professional or educational services, or a person who has been a student of the licensee within the past two years.

(c) A therapist shall not provide therapeutic services to a person with whom the therapist has had a sexual relationship.

(d) A licensee shall not practice therapeutic deception of a person who is a client or former client.

(e) It is a defense to a disciplinary action under subsections (b)-(d) of this section, if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred, and the licensee terminated mental health services with the person more than two years before the date the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred.

(f) It is not a defense under subsections (b)-(d) of this section, if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the person;

(2) outside the therapy or treatment sessions of the person; or

(3) off the premises regularly used by the licensee for the therapy or treatment sessions of the person.

(g) Examples of sexual exploitation are:

(1) sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature and:

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context;

(2) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual;

(3) inappropriate sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments to or about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in therapy or treatment;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for therapy or treatment of the individual;

(7) initiating conversation regarding the sexual likes and dislikes when not necessary for therapy or treatment of the individual;

(8) kissing or fondling of a sexual nature;

(9) making a request to date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but are of a sexual nature;

(11) any bodily exposure of genitals, anus, or breasts;

(12) encouraging a client, student, intern, or former client to masturbate in the presence of the licensee; and

(13) masturbation by the licensee when a client, student, intern, or former client is present.

(h) Examples of sexual contact are:

(1) genital and genital contact;

(2) genital and anal contact;

(3) genital and oral contact;

(4) genital and any object contact;

(5) anal and any object contact;

(6) touching breasts;

(7) touching genitals;

(8) touching anus; and

(9) touching buttocks.

(i) A licensee shall report sexual misconduct as follows.

(1) If a licensee has reasonable cause to suspect that a client has been the victim of a sexual exploitation, sexual con-

tact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider during therapy or any other course of treatment, the licensee shall report the alleged misconduct not later than the 30th day after the date the licensee became aware of the misconduct or the allegations to:

(A) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact, or therapeutic deception occurred;

(B) the board if the misconduct involves a licensee; and

(C) any other state licensing agency which licenses the mental health services provider.

(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

#### §801.46. Testing.

(a) A therapist shall make known to clients the purposes and explicit use to be made of any testing done as a part of a professional relationship.

(b) A therapist shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A therapist shall not administer any test without the appropriate training and experience to administer and interpret the test.

(d) A therapist must observe the necessary precautions to maintain the security of any test administered by the therapist or under the therapist's supervision.

§801.47. *Drug and Alcohol Use.* A therapist shall not abuse the use of alcohol or drugs, use illegal drugs of any kind, or promote, encourage, or condone the illegal use or possession of alcohol or drugs.

§801.48. *Confidentiality.* Communication between a therapist and client and the client's records are confidential to the extent authorized by law.

#### §801.49. *Therapists and the Board.*

(a) Any person licensed as a therapist is bound by the provisions of the Licensed Marriage and Family Therapist Act (Act) and this chapter.

(b) A therapist shall have the responsibility of reporting alleged misrepresentations or violations of this chapter to the Texas State Board of Examiners of Marriage and Family Therapists (board) executive director.

(c) The board is not responsible for any lost or misdirected mail if sent to the address last reported by the licensee.

(d) The board may ask any applicant for licensure as a therapist whose file contains negative references of substance to come before the board for an interview before the licensure process may proceed.

(e) The board shall consider the failure of a therapist to respond to a request from the board or executive director for information or other correspondence as unprofessional conduct and grounds for disciplinary proceedings in accordance with Subchapter L of this chapter (relating to Complaints and Violations).

(f) Applicants for licensure shall not use current members of the board as references.

#### §801.50. *Assumed Names.*

(a) An individual practice by a therapist may be incorporated in accordance with the Professional Corporation Act or other applicable law.

(b) When an assumed name is used in any practice of therapy, the name of the therapist must be listed in conjunction with the assumed name. An assumed name used by a therapist must not be false, deceptive, or misleading.

#### §801.51. *Consumer Information.*

(a) A licensee shall inform each client of the name, address, and telephone number of the Texas State Board of Examiners of Marriage and Family Therapists (board) for the purpose of reporting violations of the Licensed Marriage and Family

Therapist Act (Act) or this chapter as follows:

(1) on each application or written contract for services;

(2) on a sign prominently displayed in the primary place of business; or

(3) on a bill for counseling services provided to a client or third party.

(b) The board shall prepare information of consumer interest which describes the regulatory functions of the board and board procedures for handling and resolving complaints.

(c) The board shall make consumer information available to the public and appropriate state agencies.

(d) Upon written request, a person who does not speak English will be provided reasonable access to the board's programs.

#### §801.52. Display of License Certificate.

(a) A therapist shall display the license certificate and annual renewal card, issued by the Texas State Board of Examiners of Marriage and Family Therapists (board), in a prominent place in the primary location of practice.

(b) A therapist shall display only an original of the license certificate or annual renewal card issued by the board.

(c) A therapist shall not make any alteration on a license certificate or annual renewal card issued by the board.

(d) A therapist shall not display a license certificate or renewal card issued by the board which has been reproduced or is expired, suspended, or revoked.

#### §801.53. Advertising and Announcements.

(a) Information used by a therapist in any advertisement or announcement of services shall not contain information which is deceptive, inaccurate, incomplete, or out of context. Only the highest academic degree earned from an accredited college or university and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A therapist may advertise or announce his or her other degrees from accredited colleges or universities if the subject of the degree is specified.

(b) The Texas State Board of Examiners of Marriage and Family Therapists (board) imposes no restrictions on advertising by a therapist with regard to the use of any medium, the therapist's personal appearance, or the use of his or her personal voice, the size or duration of an advertise-

ment by a therapist, or the use of a trade name.

(c) All advertisements or announcements of therapeutic services including telephone directory listings by a person licensed by the board shall clearly state the therapist's licensure status by the use of a title such as "Licensed Therapist," or "Licensed Marriage and Family Therapist," or "L.M.F.T.," or a statement such as "licensed by the Texas State Board of Examiners of Marriage and Family Therapists."

(d) A therapist shall not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization which may be confusing or misleading to the public as to the services or legal recognition of the therapist.

#### §801.54. Research and Publications.

(a) In research with a human subject, a therapist is responsible for the subject's welfare throughout a project and shall take reasonable precautions so that the subject shall suffer no injurious emotional, physical, or social effect.

(b) A therapist shall disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the subject client.

(c) When conducting and reporting research, a therapist must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A therapist must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the therapist's research and/or publication.

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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Bobby Schmidt  
Executive Director  
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For further information, please call: (512) 834-6657

### Subchapter D. Application Procedures

#### • 22 TAC §§801.71-801.73

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session,

Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

§801.71. Purpose. The purpose of this subchapter is to set out the application procedures for examination and licensure.

#### §801.72. General.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Texas State Board of Examiners of Marriage and Family Therapists (board) forms.

(b) The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form and both the application and fee must be received at least 90 days prior to the date the applicant wishes to take the examination. Special accommodation requests must be received at the time of application.

(c) The board will send an annual notice determined by the anniversary date of the filing of an application to the applicant who does not complete an application in a timely manner. An application not completed within 30 days after the date of the board's annual notice may be voided; however, by written request to the board, an applicant may request that his or her application be kept active for an additional year. Following each additional year another annual notice will be sent to the applicant and the applicant may again request that his or her application be kept active for an additional year. Deleted applications will be retained for one year; however, after that year an applicant will be required to submit a new application and to resubmit all required materials in addition to paying a new application fee.

#### §801.73. Required Application Materials.

(a) Application form. The application form shall contain:

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, educational background including direct clinical experience, supervised experience, and references;

(2) a statement that the applicant has read the Licensed Marriage and Family Therapist Act (Act) and the Texas State Board of Marriage and Family Therapist (board) rules and agrees to abide by them;



(3) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;

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

(5) a statement that the applicant understands that the fees submitted in the licensure process are non-refundable;

(6) the applicant's dated and notarized signature; and

(7) the signature of the school official who can formally attest to the completion of an applicant's clinical practicum.

(b) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and contain:

(1) the name of the applicant;

(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;

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

(4) the inclusive dates and direct, on-site, weekly supervision provided to the applicant; individual and group supervised experiences; and the types of supervision used;

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

(6) the types and total hours of direct, face-to-face clinical services provided to individuals, families or couples;

(7) the supervisor's evaluation of the applicant's therapeutic skills and competence for independent or private practice; and

(8) the supervisor's notarized signature.

(c) Graduate or doctoral transcripts. An applicant must have the official transcript(s) showing all relevant graduate or doctoral work sent directly to the board office.

(d) References. An applicant must have references submitted by three persons who can attest to the applicant's therapy skills and professional standards of practice.

(1) The references shall be persons who are not named elsewhere in the applicant's application and are not current members of the board.

(2) References must include:

(A) one graduate instructor in a university, college, or post-degree training setting;

(B) one licensed marriage and family therapist; and

(C) one licensed or certified professional in a related mental health field which may include an additional licensed marriage and family therapist.

(e) Other documents. Vita, resume, and/or other documentation of the applicant's credentials may be submitted

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

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**Subchapter E. Criteria for Determining Fitness of Applicants for Examination and Licensure**

• 22 TAC §§801.91-801.93

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

*§801.91. Purpose.* The purpose of this subchapter is to set forth the criteria by which the Texas State Board of Examiners of Marriage and Family Therapists (board) will determine the qualifications required of applicants for approval for examination and licensure.

*§801.92. Qualifications of Applicants for Examination and Licensure.* In determining the qualifications of an applicant for examination and licensure, the Texas State Board of Examiners of Marriage and Family Therapists (board) shall consider the following:

(1) the skills and abilities of an applicant to provide adequate therapeutic services to clients; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

*§801.93. Materials Considered in Determining the Qualifications of Applicants.* In determining the fitness of applicants for examination and licensure, the Texas State Board of Examiners of Marriage and Family Therapists (board) shall consider the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) allegations of clients;

(5) transcripts or findings from official court, hearing, or investigative proceedings; and

(6) any other information which the board considers pertinent to determining the fitness of an applicant.

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

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**Subchapter F. Academic Requirements for Examination and Licensure**

• 22 TAC §§801.111-801.114

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

*§801.111. Purpose.* The purpose of this subchapter is to set out the academic requirements for examination and licensure as a marriage and family therapist.

*§801.112. General.*

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) shall accept as meeting licensure

requirements graduate work done at American universities which hold accreditation or candidacy status from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and coursework received at foreign universities shall be acceptable only if such coursework may be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. If degrees or coursework cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or coursework, the board may consider accepting, on an individual basis, accepting degrees or coursework based on other evidence presented by the foreign graduate applicant.

(c) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs, bulletins, syllabi, or by other means.

(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(e) The board shall accept no coursework which an applicant's transcript indicates was not completed with a passing grade or for credit.

(f) In the case of coursework taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below "B" or "pass" shall be counted toward meeting academic requirements for examination or licensure.

(g) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

(h) A person who wishes to make up academic deficiencies may be assured that the additional work done will be acceptable to the board by submitting an official application and a proposed plan to complete academic requirements which the board will evaluate.

#### *§801.113. Academic Requirements.*

(a) Persons applying for examinations and licensure must have:

(1) a master's or doctoral degree in marriage and family therapy or in a related mental health field with coursework and training equivalent to a graduate degree in marriage and family therapy; and

(2) a planned graduate program in marriage and family therapy or its substantial equivalent of at least 45 semester hours which an applicant completed at an accredited school. The 45 semester hours may be coursework taken in the required graduate degree program.

(b) A graduate degree under subsection (a)(1) of this section or the substantial equivalent of a planned graduate program in marriage and family therapy must be any planned graduate program of at least 45 semester hours which was designed to train a person to provide direct services to assist individuals, families, or couples in a therapeutic relationship in the resolution of cognitive, affective, behavioral, or relational dysfunctions within the context of marriage or family systems.

(c) After receipt of a degree meeting the requirements of subsection (a)(1) of this section, the applicant must have completed two years of work experience in marriage and family therapist services that must:

(1) include at least 1,000 hours of direct clinical services to individuals, couples, or families, of which at least 500 hours must be direct clinical services to couples or families; and

(2) be supervised in a manner acceptable to the Texas State Board of Examiners of Marriage and Family Therapists (board), including at least 200 hours of supervision of the provision of direct clinical services by the applicant, of which at least 100 hours must be supervised on an individual basis.

(d) No direct clinical services course intended primarily for practice in the administration and grading of appraisal or assessment instruments shall count toward the 1,000 clock-hour requirement.

*§801.114. Academic Course Content.* An applicant having a graduate degree in a mental health related field must have substantial equivalent graduate course work in each of the following areas (one course equals three semester hours):

(1) theoretical foundations of marital and family therapy—one course;

(2) assessment and treatment in marital and family therapy—four courses;

(3) human development, gender, multicultural issues and family studies—two courses;

(4) ethics and professional studies—one course;

(5) research—one course; and

(6) supervised clinical practicum—12 months/nine hours.

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## Subchapter G. Experience Requirements for Examination and Licensure

### • 22 TAC §§801.141-801.144

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

*§801.141. Purpose.* The purpose of this subchapter is to set out the experience requirements for examination and licensure as a marriage and family therapist.

#### *§801.142. Experience Requirements.*

(a) Applicants for examination must have completed two years of marriage and family therapy experience acceptable to the Texas State Board of Marriage and Family Therapists (board).

(b) Applicants must complete the required 200 clock hours of supervised clinical experience and 1,000 hours of direct clinical services to individuals, couples, or families.

(c) Experience shall be acceptable to the board if:

(1) it was begun and completed after the completion of a graduate degree in marriage and family therapy or its substantial equivalent degree;

(2) it consisted primarily of the provision of direct, face-to-face therapeutic services in the practice of marriage and family therapy to assist individuals, couples, and families; and

(3) the experience was under the direct supervision of a supervisor meeting the requirements of \*801.143 of this title (relating to Supervisor Requirements).

**§801.143. Supervisor Requirements.**

(a) A supervisor acceptable to the Texas State Board of Examiners of Marriage and Family Therapists (board) must be licensed by the Texas State Board of Examiners of Marriage and Family Therapists (board) for at least 24 months or have been eligible for licensure by the board for at least 24 months.

(b) A supervisor must be approved by the board by submitting a notarized board form as well as other documentation of credentials. Supervised experience will not be approved until all required documentation has been received.

(c) A supervisor approved by the board must meet and document the following educational, experiential, and supervision requirements:

(1) education required:

(A) a graduate degree in marriage and family therapy, or a graduate degree in a mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from a regionally accredited educational institution, as defined in \*801.2 of this title (relating to Definitions), and

(B) a one semester graduate course in marriage and family therapy supervision (45 contact hours); or

(C) an equivalent course of study consisting of marriage and family therapy supervision workshops in combination with direct study of the literature. Fifteen of the 45 contact hours must have been in a class or workshop format which included a minimum of four persons training to become supervisors of marriage and family therapy. Direct study must have been approved and monitored by a licensed marriage and family therapy supervisor.

(2) post-master's degree experience required.

(A) at least 3,000 hours of client contact in the practice of marriage and family therapy over a minimum of three years; and

(B) provision of a minimum of 180 hours of marriage and family therapy supervision over at least two years

**§801.144. Other Conditions for Supervised Experience.**

(a) A person who is in the process of completing the minimum 24 months, including 200 hours of supervised experience

may not practice within his or her own private independent practice of therapy as part of such months or hours; however, the person may be employed in his or her supervisor's private practice of therapy as part of the internship.

(b) After January 1, 1995, a marriage and family therapist intern must hold a temporary license. No hours will be counted toward the supervised experience except those accumulated during the time the intern is licensed.

(c) A supervisor may not be employed by the person whom he or she is supervising.

(d) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to an intern.

(e) During the period of supervised experience, an intern may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(f) During internship, the full professional responsibility for the therapeutic activities of an intern shall rest with the intern's official supervisor.

(g) All supervised experience submitted in fulfillment of the board's requirements must have been on a formal basis by contract or other specific arrangement prior to the period of supervision. Supervisory arrangements must include all specific conditions agreed to by the supervisor and intern.

(h) If an intern enters into contracts with both a supervisor and an organization with which the supervisor is employed or affiliated:

(1) the therapeutic services shall be performed on the site(s) of the organization,

(2) no payment for services shall be made directly by a client to the intern,

(3) clients records shall remain the property of the organization;

(4) liability shall remain with the organization and/or the supervisor; and

(5) there shall be no financial arrangements between the organization and intern that have been made that extend beyond the period of supervision of the marriage and family therapist intern by the supervisor.

(i) Group supervised experience of an applicant for examination may count toward an applicant's supervision requirement

only if the supervision group consisted of no more than six interns.

(j) Individual supervision of an applicant shall count toward the applicant's experience requirement only if the supervisor oversaw no more than eight persons at any one time either in group or individual supervision for the inclusive dates of the applicant's supervised experience.

(k) An intern may have no more than two supervisors unless board approval is received for further supervisors. The intern's former supervisor or agency must submit a notarized statement explaining the reasons for the change of supervisor

(l) The documents and fee submitted will be considered part of the application for examination and licensure and will not need to be resubmitted.

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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Bobby Schmidt  
Executive Director  
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For further information, please call (512) 834-6657

◆ ◆ ◆  
**Subchapter H. Licensure Examinations**

• **22 TAC 801.171-801.174**

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1

**§801.171 Purpose** The purpose of this subchapter is to establish the rules governing the administration, content, grading, and other procedures for examination for licensure.

**§801.172. Frequency** The Texas State Board of Examiners of Marriage and Family Therapists (board), or its designee, shall administer licensure examinations at least semi-annually or as often as deemed necessary.

**§801.173. Applying for Examination.** A person must apply for examination in accordance with Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure) and §801.73 of this title (relating to Required Application Materials). The Texas State Board of Examiners of Marriage and Family Therapists (board) shall notify an applicant of application approval or disapproval and if disapproved, state the reason.

(1) A person may apply to take the examination after they have:

(A) submitted the necessary forms, fee, and application in accordance with §801.73 of this chapter (relating to Required Application Materials); and

(B) submitted the notarized statement(s) from their supervisor(s) documenting the completion of the 1,000 hours of direct clinical contact and the 200 hours of approved supervision.

(2) At least 60 days prior to the examination, the executive director or the executive director's designee shall notify an applicant in writing that an application has been approved.

(3) An applicant who wishes to take a scheduled examination must complete an examination registration form and return it to the board with the required fee postmarked at least 30 days prior to the date of the examination.

(4) A notice that an application for examination is denied must state the reason for the denial.

**§801.174. Examination.**

(a) The examination shall be a written examination prescribed by the Texas State Board of Examiners of Marriage and Family Therapists (board) which has been validated by an independent testing professional.

(b) An applicant shall apply to take the examination on a form prescribed by the board. The examination application must be accompanied by the examination fee stated in §801.19(b) (2) of this title (relating to Fees).

(c) The board, or its designee, shall determine the times and places for licensing examinations and give reasonable public notice.

(d) Examination results shall be reported as follows.

(1) If the examination is graded or reviewed by the board, the examinee shall be notified of the results of the examination within 30 days of the examination date.

(2) If the examination is graded or reviewed by a national testing service, the board shall notify each examinee within 15 days of the date which the board receives the results from the national testing service.

(3) If the examination results will be delayed more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay within 90 days of the examination date.

(e) Procedures for failure of an applicant to pass an examination are as follows.

(1) An applicant who fails an examination may retake the examination after payment of an additional examination fee.

(A) The applicant must be re-examined within 12 months of the unsuccessful examination.

(B) If the applicant fails the second examination, the board may require the applicant to submit evidence of satisfactory completion of additional courses of study prescribed by the board.

(2) The board shall furnish the person who failed the examination with an analysis of that person's performance on the examination if so requested in writing by the examinee.

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

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◆ ◆ ◆  
**Subchapter I. Issuance of License**

• **22 TAC §§801.201-801.204**

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

**§801.201. Purpose.** The purpose of this subchapter is to set out licensing procedures of the Texas State Board of Examiners of Marriage and Family Therapists (board).

**§801.202. Issuance of Licenses.**

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) will send each applicant whose application has been approved and who has passed the examination, if applicable, a licensure form to complete and return with the licensure fee.

(b) Upon receiving an applicant's licensure form and fee, the board shall issue the person a license containing a license number within 30 days.

(c) The board will replace a lost, damaged, or destroyed license certificate upon a written request from the therapist and payment of the duplicate license fee. Requests must include a notarized statement detailing the loss or destruction of the therapist's original license or be accompanied by the damaged certificate.

(d) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate license within 30 days for a second place of practice which is designated in a licensee's file.

**§801.203. Provisional License by Endorsement.**

(a) A provisional license may be granted to a person who:

(1) is licensed or otherwise registered as a marriage and family therapist by another state or other jurisdiction, whose requirements for licensure or registration, at the time the license or registration were obtained, were substantially equivalent to the requirements set out in §801.73 of this title (relating to Required Application Materials);

(2) has successfully passed a national examination relating to marriage and family therapy or an examination approved by the Texas State Board of Examiners of Marriage and Family Therapists (board); and

(3) is sponsored by a licensed marriage and family therapist in Texas with whom the provisional license holder may practice under this section.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a license to a holder of a provisional license if:

(1) the provisional license holder passes the examination required by Subchapter H of this chapter (relating to Licensure Examinations);

(2) the provisional license holder provides an official graduate transcript meeting the requirements set forth in Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure);

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements for Examination and Licensure); and

(4) the provisional license holder meets any other requirements set forth under the Licensed Marriage and Family Therapist Act (Act).

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

**§801.204. Temporary License.** A temporary license shall be issued to a marriage and family therapist intern who has:

(1) obtained a master's or doctoral degree in marriage and family therapy or a related mental health field with coursework and training equivalent to a graduate degree in marriage and family therapy as set out in §801.114 of this title (relating to Academic Course Content);

(2) submitted an official graduate transcript from a regionally accredited institution of higher education or an institution of higher education approved by the board;

(3) submitted a complete application with the application fee to the board;

(4) submitted a supervisory contract to the board which specifies all contractual agreements with said supervisor; and

(5) submitted the temporary licensure fee as set out in §801.19 of this title (relating to Fees).

(b) The temporary license will be issued for a period of 30 months and may be extended for 180 days with the board's approval.

(c) Regular licensure will be issued to a marriage and family therapist intern if:

(1) the marriage and family therapist intern submits documentation of

direct, clinical experience and supervision as required by Subchapter G of this chapter (relating to Experience Requirements for Examination and Licensure); and

(2) the marriage and family therapist intern passes the marriage and family therapy licensure examination as required by Subchapter H of this chapter (relating to Licensure Examinations).

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

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## Subchapter J. Licensure Renewal and Inactive Status

### • 22 TAC §§801.231-801.237

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

**§801.231. Purpose.** The purpose of this subchapter is to set out the rules governing licensure renewal and inactive status.

**§801.232. General.**

(a) A therapist must renew licensure annually.

(b) Each therapist is responsible for renewing licensure and paying the renewal fee before the expiration date and shall not be excused from paying late renewal fees or renewal penalty fees.

(c) The Texas State Board of Examiners of Marriage and Family Therapists (board) shall deny the renewal of a license of a therapist who is in violation of the Licensed Marriage and Family Therapist Act (Act) or this chapter at the time of application for renewal.

(d) A therapist must have fulfilled continuing education requirements prescribed by the board rule in order to renew licensure.

(e) A therapist whose license is not renewed due to failure to meet all requirements for licensure renewal shall return his or her license certificate to the board and shall not advertise or represent himself or herself as a licensed marriage and family therapist in any manner.

**§801.233. Staggered Renewals.** The Texas State Board of Examiners of Marriage and Family Therapists (board) shall use a staggered system for licensure renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) Licensure fees will be prorated if the licensee's initial renewal date as determined by the board occurs less than 12 months after the original date of licensure.

(3) Prorated fees shall be rounded off to the nearest dollar.

**§801.234. Licensure Renewal.**

(a) At least 30 days prior to the expiration date of a person's license, the Texas State Board of Examiners of Marriage and Family Therapists (board) will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee or the licensee's authorized representative must complete and return to the board with the required fee.

(b) The Licensure renewal form shall require the licensee to provide current addresses, telephone numbers, and other information such as continuing education completed and type of practice.

(c) The board shall not consider a license to be renewed until it receives the completed Licensure renewal form and the renewal fee, and the licensee has complied with applicable continuing education requirements. No renewal fee shall be accepted by the board until the licensee has met the applicable continuing education requirements.

(d) The board shall issue a renewal card to a licensee who has met all requirements for renewal before license expiration.

(e) The license of a person who made a timely request for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(f) The board will not process the licensure renewal of a licensee who is a party to a formal license revocation or suspension proceedings. A formal proceeding

commences when the notice described in Subchapter L of this chapter (relating to Complaints and Violations) is mailed by the board.

(1) A licensee whose license is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(2) In the case of delay in the licensure renewal process because of formal licensure suspension or revocation proceeding, late renewal penalty fees shall not apply.

(g) The board is not responsible for lost, misdirected, or undelivered correspondence if sent to the address last reported to the board.

#### §801.235 Late Renewal

(a) A person who renews a license after the expiration date but on or within 90 days after the expiration date shall pay the renewal fee plus one-half the examination fee. If a person's license has been expired for 90 days but less than one year the person may renew the license by paying to the Texas State Board of Examiners of Marriage and Family Therapists (board) the renewal fee and a fee that is equal to the examination fee for Licensure. A final notice will be sent 30 days after the expiration date.

(b) A person whose license was not renewed within one year of the expiration date may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an original license.

(c) The board may renew without re-examination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.

#### §801.236 Inactive Status

(a) A licensee may request that his or her license be declared inactive by written request to the Texas State Board of Examiners of Marriage and Family Therapists (board) prior to the expiration of the license. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. Inactive status periods shall not exceed three years, however, consecutive inactive status periods may be approved by the board. An inactive status fee is required for each three-year period of inactive status.

(b) If a licensee fails to renew his or her license because the licensee is called to or on active duty with the armed forces

of the United States serving outside the State of Texas, the licensee or the licensee's authorized representative may request that the license be declared inactive or be renewed. A request for inactive status shall be made in writing to the board prior to expiration of the license or within one year from the expiration date. This subsection is an exception to the requirement in subsection (a) of this section that the request be made prior to expiration of the license. A request for renewal may be made before or after the expiration date.

(1) If the request is made by the licensee's authorized representative, the request must include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty serving outside the State of Texas.

(3) The payment of the inactive status fee, late renewal fee, and licensure renewal penalty fee is waived for a licensee under this subsection.

(4) An active duty licensee shall be allowed to renew under this subsection without submitting proof of continuing education hours if proof is required for renewal; however, the licensee must submit proof of completion of the required number of continuing education hours by the end of the following time period. The time period shall start on the actual date of renewal of the license and be equal to the length of time the licensee was on active duty serving outside the State of Texas during the three-year continuing education period or following expiration of the license. If the licensee fails to submit proof of continuing education by the end of the time period, the board may suspend or revoke or deny renewal of the license.

(5) The written request shall include a current address and telephone number for the licensee or the licensee's authorized representative.

(6) The board may periodically notify the licensee or the licensee's authorized representative that the license of the licensee remains in inactive status, if applicable.

(7) Except in extraordinary circumstances, a licensee on active duty serving outside the State of Texas shall notify the board that the licensee is on active duty. The board shall note in the licensee's file that the licensee may be eligible for renewal under this subsection.

(8) If a licensee is a civilian impacted or displaced for business purposes outside of the State of Texas due to a

national emergency or war, the licensee or the licensee's authorized representative may request that the license be declared inactive in the same manner as described in this subsection for military personnel. The written request shall include an explanation of how the licensee is impacted or displaced, which explanation shall be on the official letterhead of the licensee's business. The requirements of paragraph (4) this subsection relating to renewal by active duty licensees shall not apply to a civilian under this paragraph.

(c) An inactive status period shall begin on the first day of the month following board approval and payment of an inactive status fee.

(d) All privileges, fees, and continuing education requirements are not applicable during the period of inactive status. A person may not act as a therapist or represent himself or herself as a therapist during the period of inactive status.

(e) Continuing education credit cannot be earned while on inactive status.

(f) A person is subject to investigation and action under Subchapter L of this chapter (relating to Complaints and Violations) during the period of inactive status.

(g) A therapist may return to active status by written request to, and approval by, the board. Active status shall begin the first day of the month following board approval and payment of a license fee. The license fee shall be prorated to the next renewal date in accordance with §801.233 of this chapter (relating to Staggered Renewals).

(h) If continuing education requirements have not been met prior to the time that a therapist goes on inactive status, upon return to active status the hours that were remaining to complete the continuing education requirement described in §801.262 of this chapter (relating to Deadlines) must be completed in a time period equal to the time that was remaining in the therapist's cycle at the time that the therapist went into inactive status.

(i) Upon return to active status, the therapist's next continuing education cycle will begin on the first day of the month following the licensee's birth month; however, the start date for the next cycle will begin following the additional time period described in subsection (h) of this section.

#### §801.237 Surrender of License.

(a) Surrender by licensee. A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion.

(b) Acceptance by the Texas State Board of Examiners of Marriage and Family Therapists (board).

(1) The board shall decide whether to formally accept the voluntary surrender of a license.

(2) Surrender of a license without the acceptance of the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Act or any other statute.

(c) Formal disciplinary action. When a licensee has offered the surrender of his or her license after a complaint has been filed alleging violations of the Licensed Marriage and Family Therapist Act (Act) or this chapter and the board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(d) Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

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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Bobby Schmidt  
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## Subchapter K. Continuing Education Requirements

### • 22 TAC §§801.261-801.268

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

**§801.261. Purpose.** The purpose of this subchapter is to establish the continuing education requirements for the renewal of licensure which a therapist must complete annually. These requirements are intended to maintain and improve the quality of professional services in marriage and family therapy provided to the public and keep the therapist knowledgeable of current research, techniques, and practice and provide other resources which will improve skill and

competence in marriage and family therapy. Continuing education hours must be relevant to the practice of marriage and family therapy.

#### §801.262. Deadlines.

(a) Continuing education shall be submitted to the Texas State Board of Examiners of Marriage and Family Therapists (board) on a voluntary basis beginning September 1, 1993. Continuing education shall be submitted to the board on a mandatory basis beginning with the licensing cycle after September 1, 1995.

(b) Continuing education requirements for renewal shall be fulfilled during one year periods beginning on the first day of a therapist's renewal year and ending on the last day of the therapist's renewal year.

**§801.263. Clock Hour Requirements for Continuing Education.** A licensee must complete 20 clock hours of continuing education acceptable to the Texas State Board of Examiners of Marriage and Family Therapists (board) each year as described in §801.262(b) of this chapter (relating to Deadlines). On or after September 1, 1995, a three-clock hour marriage and family ethics course must be submitted every third year. A clock-hour shall be 60 minutes of attendance and participation in an acceptable continuing education experience.

**§801.264. Types of Acceptable Continuing Education.** Continuing education undertaken by a marriage and family therapist shall be acceptable if the experience is given by an approved provider and falls into one or more of the following categories:

(1) participation in national conferences such as the American Association of Marriage and Family Therapists (AAMFT), American Family Therapy Academy (AFTA), American Counselors Association (ACA), American Orthopsychiatric Association (ORTHO), American Pastoral Association, American Psychological Association (APA), and National Association of Social Workers (NASW), which present family systems training;

(2) participation in conferences such as the Texas Association of Marriage and Family Therapists (TAMFT); and Texas associations in counseling, pastoral work, and psychology or social work which offer marriage and family systems training;

(3) participation in local seminars in marriage and family therapy presented by mental health groups such as the San Antonio Marriage and Family Therapy Association, Austin Marriage and Family Therapy Association, Dallas Marriage and Family Therapy Association, local hospitals, universities, and local agencies;

(4) completing a graduate or institute course in the field of marriage and family therapy;

(5) giving workshops, seminars, or lectures on family issues at the national, state or local conferences (the same seminar may not be used more than once annually);

(6) presenting workshops or seminars on marriage and family therapy to other mental health professionals (the same seminar may not be used more than once annually); and

(7) by teaching a graduate or undergraduate course in marriage and family therapy at a college or university (graduate work instruction may count for no more than 50% of annual continuing education).

**§801.265. Continuing Education Providers.** The Texas State Board of Examiners of Marriage and Family Therapists (board) is not responsible for approving individual continuing education programs. The Texas State Board of Examiners of Marriage and Family Therapists (board) will approve organizations as continuing education providers of continuing education units. The board will grant a three-year certificate to organizations which shall permit the organizations to approve continuing education units for their marriage and family therapy courses, seminars, and conferences. These organizations do not need prior permission from the board but must submit an annual list of their seminars, workshops, and courses with the individual provider's name to the board. Any university, professional organization, or personal provider who meets the above criteria may advertise continuing education for licensed marriage and family therapists. Sole providers must receive approval from the board or a board approved sponsoring organization to provide continuing education units.

**§801.266. Criteria for Approval of Continuing Education Activities.** Each continuing education experience submitted by a licensee or sponsor will be evaluated on the basis of the following criteria.

(1) Attendance at programs shall be in accordance with §801.264 of this title (relating to Types of Acceptable Continuing Education) and shall consider the following:

(A) relevance of the subject matter to increase or support the development of skill and competence in marriage and family therapy or in areas of studies or disciplines related to marriage and family therapy;

(B) objectives of specific information and skill to be learned;

(C) subject matter, educational methods, materials, and facilities utilized including the frequency and duration of the sessions, and the adequacy to implement learner objectives; and

(D) sponsorship and leadership of programs including the name of the sponsoring individual(s) or organization(s); program leaders if different from sponsors; and contact person if different from the preceding.

(2) Teaching in approved programs shall be in accordance with §801.264 of this title. Documentation from sponsor(s) including an evaluative statement of performance is required.

(3) Completion of academic work shall be in accordance with §801.264 of this title. Official graduate transcripts from accredited school showing completion of graduate hours in appropriate areas for which the licensee received at least a grade of "B" or "pass" is required.

**§801.267. Determination of Clock Hour Credits.** The Texas State Board of Examiners of Marriage and Family Therapists (board) shall credit continuing education as follows.

(1) Parts of programs which meet the criteria §801.264 of this title (relating to Types of Acceptable Continuing Education) shall be credited on a one-for-one basis with one clock hour credit for each clock-hour spent in the continuing education activity.

(2) A graduate course with a total of 45 clock hours (three credit hours) or an institute's post-graduate course with a total of 45 clock hours will be accepted as two years (40 clock hours) of continuing education. Other types of continuing education need to be submitted annually.

**§801.268. Submittal of Continuing Education.** Continuing education units of no less than 20 hours must be reported annually by the licensee at the time of renewal. These hours will be reported on the form provided by the Texas State Board of Examiners of Marriage and Family Therapists (board). The board shall conduct an annual random audit requesting documentation of continuing education. Individual continuing education certificates of attendance shall not be submitted unless the licensee is requested to do so by the board.

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## Subchapter L. Complaints and Violations

### • 22 TAC §§801.291-801.298

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

**§801.291. Purpose.** The purpose of this subchapter is to set forth the valid causes for the denial, revocation, probation, or suspension of licensure, or reprimand of a licensee and the procedures for filing complaints and allegations of statutory or rule violations.

(1) Prior to denying, revoking, suspending, probating, or suspending probation of a license, or reprimanding a licensee, the subcommittee shall give the applicant or licensee the opportunity for an informal disposition or a formal hearing or both an informal disposition and a formal hearing in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal Dispositions), and Subchapter O of this chapter (relating to Formal Hearings).

(2) The following shall be grounds for revocation, suspension, probation, or suspension of probation of a license, or reprimand of a licensee if a person has:

(A) been convicted of a felony or a misdemeanor involving moral turpitude;

(B) obtained or attempted to obtain a license by fraud or deception;

(C) used drugs or alcohol to an extent that affects professional competence;

(D) been grossly negligent in performing professional duties;

(E) been adjudicated mentally incompetent by a court of competent jurisdiction;

(F) practiced in a manner detrimental to the public health or welfare;

(G) advertised in a manner that tends to deceive or defraud the public;

(H) had a license or certification revoked by a licensing agency or by a certifying professional organization;

(I) otherwise violated the Act or board rules; or

(J) committed an act in violation of Section 2114, Penal Code, or for which liability exists under Chapter 81, Civil Practice and Remedies Code.

**§801.292. Criteria for Denial of Licensure.** The substantiation of any of the following items related to an applicant may be, as the Texas State Board of Examiners of Marriage and Family Therapists (board) determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate therapeutic services in independent practice;

(2) misrepresentation of professional qualifications or association;

(3) misrepresentation of services and efficacy of services to clients;

(4) use of misleading or false advertising;

(5) use of relationships with clients to promote personal gain or for the profit of an agency or commercial enterprises of any kind;

(6) engaging in sexual contact or intimacies of any kind with any client or former client;

(7) a breach of confidentiality of a client except where allowed by law or rules of the board;

(8) abuse of the use of alcohol or drugs or the use of illegal drugs of any kind;

(9) any misrepresentation in the application or other materials submitted to the board; and

(10) the violation of any provision of the Licensed Marriage and Family Therapist Act or this chapter.



**§801.293. Procedures for Revoking, Suspending, Probating, or Denying a License, or Reprimanding a Licensee.**

(a) The Texas State Board of Examiners of Marriage and Family Therapist (board) executive director will give written notice to the person that the board intends to deny, suspend, or revoke the license, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), Texas Civil Statutes, Article 6252-13a, and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).

(b) If the board denies, suspends, or revokes a license, or reprimands a licensee, under this section, the executive director will give that person written notice:

(1) of the reasons for the decision;

(2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the board and its decision in accordance with the APA; and

(3) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable.

**§801.294. Violations by an Unlicensed Person.**

(a) A person commits an offense if he or she knowingly or intentionally acts as a licensed professional marriage and family therapist without being licensed by the Texas State Board of Examiners of Marriage and Family Therapists (board). Such an offense is a Class B misdemeanor.

(b) An unlicensed person who facilitates or coordinates the provision of professional services but does not act as a licensed marriage and family therapist is not in violation of the Licensed Marriage and Family Therapist Act.

**§801.295. Power to Sue.** The Texas State Board of Examiners of Marriage and Family Therapists (board) may institute a suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin the violation of the Licensed Marriage and Family Therapist Act (Act).

**§801.296. Complaint Procedures.**

(a) A person wishing to report a complaint against or alleged violation of the Licensed Marriage and Family Therapist Act (Act) or this chapter by a licensee or other person shall notify the executive di-

rector, Texas State Board of Examiners of Marriage and Family Therapists, 1100 West 49th Street, Austin, Texas 78756-3183, or by calling 1-800-942-5540 (for complaints only). The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office.

(b) Upon receipt of a complaint, the executive director may send to the complainant an official form which the complainant should complete and return to the Texas State Board of Examiners of Marriage and Family Therapists (board) office.

(c) Upon receipt of a complaint, the executive director shall notify the alleged violator of the complaint and request a written response within 45 days.

(d) The executive director shall collect all information related to the complaint. The chair shall appoint a committee to review the complaint and the supporting documentation to determine if there is sufficient evidence to request further investigation.

(e) The executive director shall keep an information file about each complaint which will include the following information:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(f) The executive director shall notify the parties to the complaint of the status of the complaint, on a quarterly basis, until the complaint is resolved.

(g) The committee may request further investigation of the complaint. After investigation has been completed, the person completing the investigation shall submit his or her findings to the committee and the executive director. The written investigative report shall set out all facts obtained during the investigation.

(h) If the committee determines that there are insufficient grounds to support or act upon the complaint, the committee may dismiss the complaint and give written notice of the dismissal to the complainant and the licensee or person against whom the complaint has been filed.

(i) If the committee determines that there are sufficient grounds to support the complaint, the committee may recommend to the board that the license be denied, suspended, probated, or revoked, that the licensee be reprimanded, or that other appropriate action as authorized by law be taken.

**§801.297. Monitoring of Licensees.**

(a) The executive director shall maintain a complaint tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports. The report shall be scheduled at intervals appropriate to each individual situation.

(c) The executive director shall review the reports and notify the complaints committee if the requirements of the disciplinary action are not met.

(d) The complaints committee may consider more severe disciplinary proceedings if non-compliance occurs.

**§801.298. Default Orders.**

(a) If a right to a hearing is waived under Subchapter O of this chapter (relating to Formal Hearings), the Texas State Board of Examiners of Marriage and Family Therapists (board) shall consider an order taking disciplinary action as described in written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

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

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TRD-9333414

Bobby Schmidt  
Executive Director  
Texas State Board of  
Examiners of Marriage  
and Family Therapists

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

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**Subchapter M. Licensing of  
Persons with Criminal Back-  
grounds**

• 22 TAC §801.331, §801.332

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

**§801.331. Purpose.** The purpose of this subchapter is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses as marriage and family therapists.

**§801.332. Criminal Conviction.** The Texas State Board of Examiners of Marriage and Family Therapists (board) shall consider the felony or misdemeanor conviction of a therapist as grounds for the suspension or revocation of the therapist's license and shall review the conviction.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a therapist or if the crime involves moral turpitude.

(2) In considering whether a criminal conviction directly relates to the occupation of a therapist, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a licensee to be a therapist. The following felonies and misdemeanors relate to the license of a therapist because these criminal offenses indicate an inability or a tendency to be unable to perform as a therapist:

(i) the misdemeanor of knowingly or intentionally acting as a therapist without a license;

(ii) a misdemeanor and/or a felony offense under various chapters of the Texas Penal Code:

(I) concerning Title 5, which relates to offenses against the person;

(II) concerning Title 7, which relates to offenses against property;

(III) concerning Title 9, which relates to offenses against public order and decency;

(IV) concerning Title 10, which relates to offenses against public health, safety, and morals; and

(V) concerning Title 4, which relates to offenses of attempting or

conspiring to commit any of the offenses in subclauses (I)-(IV) of this clause;

(iii) the misdemeanors and felonies listed in subclauses (I)-(II) of this subparagraph are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and this chapter;

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

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a therapist. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7).

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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Bobby Schmidt  
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For further information, please call: (512) 834-6657

## Subchapter N. Informal Disposition

### • 22 TAC §801.351

The new section is proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The section affects Texas Civil Statutes, Article 4512c-1.

#### §801.351. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the executive director or the complaints committee of the Texas State Board of Examiners of Marriage and Family Therapists (board) determines that the

public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal settlement conference; however, the decision to hold a conference shall be made by the executive director or the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall decide upon the time, date and place of the settlement conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested, to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten-day notice requirement.

(e) A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the settlement conference. The notice shall inform the licensee or applicant of the nature of the alleged violation of the following:

(1) that the licensee may be represented by legal counsel;

(2) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(3) that committee members may be present;

(4) that the board's legal counsel or a representative of the Office of the Attorney General will be present;

(5) that the licensee's or applicant's attendance and participation is voluntary;

(6) that the complainant and any client involved in the alleged violations may be present; and

(7) that the settlement conference shall be cancelled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend.

(f) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is cancelled.

(g) Members of the complaints committee may be present at a settlement conference.

(h) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(i) The licensee or applicant, the licensee's or applicant's attorney, the committee members, the board's legal counsel, the executive director, and the board may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each settlement conference. The committee members or executive director may call upon the attorney at any time for assistance in the settlement conference.

(k) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(l) Access to the board's investigative file may be prohibited or limited in accordance with the Open Records Act and the Administrative Procedure Act (APA).

(m) At the discretion of the executive director or the committee members, a tape recording may be made of some or all of the settlement conference.

(n) The committee members or the executive director shall exclude from the settlement conference all persons except witnesses during their testimony, the licensee or applicant, the licensee's or applicant's attorney, and board staff.

(o) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(p) At the conclusion of the settlement conference, the committee members or executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Licensed Marriage and Family Therapist Act (Act). The committee member may also conclude that the board lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(q) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed

settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(r) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(s) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(t) The identity of the licensee or applicant shall not be made available to the Texas State Board of Examiners of Marriage and Family Therapists (board) until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(u) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(v) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(w) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA.

(x) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(1) If the executive director or complaints committee determines that an informal conference shall not be held, the executive director shall give written notice to the licensee or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee or appli-

cant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirement of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice. The complainant shall be informed that he or she may also submit a written statement to the board office.

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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Bobby Schmidt  
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## Subchapter O. Formal Hearings

### • 22 TAC §§801. 361-801.369

The new sections are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The sections affect Texas Civil Statutes, Article 4512c-1.

*§801.361. Purpose.* The purpose of this subchapter is to set forth the formal hearing procedures and practices that will be used by the Texas State Board of Examiners of Marriage and Family Therapists (board) in handling denials, suspensions of probation, revocations, and suspensions of licenses and reprimands of licensees and other contested cases and in implementing the contested case provisions of the Administrative Procedure Act (APA).

### *§801.362. General.*

(a) The Texas State Board of Examiners of Marriage and Family Therapists (board) on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provision of the Administrative Procedure Act (APA), applicable state statutes, and this chapter.

(b) A formal hearing or contested case proceeding unless otherwise determined by Texas State Board of Examiners of Marriage and Family Therapists (board) shall be held in Travis County, Texas.

**§801.363. Notice.**

(a) The hearing examiner shall give notice of the formal hearing according to the notice requirements of the Administrative Procedure Act (APA).

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice, the hearing examiner may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances.

**§801.364. Parties to the Hearing.**

(a) All parties must have a justiciable interest in the proceedings to be designated as parties. All appearances are subject to a motion to strike upon a showing that the party has no justiciable interest in the proceeding.

(b) A party has the privilege to participate fully in any prehearing and formal hearing, to appeal as provided by law, and to perform any and all duties and privileges provided by the APA and other applicable laws.

(c) Any person not wishing to be designated as a party but desiring only to appear for the purpose of showing support or opposition or to make general relevant statements showing support or opposition may appear at the hearing and make or file statements.

(d) The hearing examiner shall designate parties at any time prior to final closing of the hearing. No person shall be admitted as a party later except upon a finding by the hearing examiner of good cause and extenuating circumstances and that the hearing will not be unreasonably delayed.

(e) In their pleadings, parties may classify themselves as applicants, petitioners, respondents, protesters, complainants, etc., but regardless of such classification, the hearing examiner has the authority to determine and designate their true status whenever necessary.

(f) A party may appear personally and/or be represented by counsel or other authorized representative.

(g) The hearing examiner may require parties of each class of affected persons to select one person to represent them in the proceedings.

**§801.365. Subpoenas.**

(a) On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner shall issue a subpoena to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents.

(b) There must be a showing of good cause for the subpoena, i.e., the witnesses or documents must have information that is relevant and material to the hearing. The subpoena should not result in undue harassment, imposition, inconvenience, or unreasonable expense to a party.

(c) A party or witness may seek to nullify the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(d) Witnesses may be subpoenaed.

(e) Documents include books, papers, accounts, and similar materials or objects.

(f) The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by the Administrative Procedure Act (APA), §14.

**§801.366. Depositions.** The taking and use of depositions in any contested case proceeding shall be governed by the Administrative Procedure Act (APA), §14.

**§801.367. Pre-hearing Conferences.**

(a) In a contested case, the hearing examiner, on his or her own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleading;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the hearing;
- (5) specifying the number of witnesses;
- (6) the mutual exchange of prepared testimony and exhibits;
- (7) designation of parties; and
- (8) other matters which may expedite the hearing.

(b) The hearing examiner shall conduct the pre-hearing conference in such a manner and with the necessary authority to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(c) The hearing examiner shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(d) Any action taken at the pre-hearing conference shall be reduced to writ-

ing, signed by the parties, and made a part of the record.

**§801.368. Hearing Procedures.**

(a) The hearing examiner's duties. The hearing examiner shall preside over and conduct the hearing. On the day and time designated for the hearing, the hearing examiner shall:

- (1) convene and call the hearing to order;
- (2) state the purpose of and the legal authority for the hearing;
- (3) announce that a record of the hearing will be made;
- (4) outline the procedure and order of presentation that will be followed;
- (5) administer oaths to those who intend to testify; and
- (6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.

(b) Order of presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the hearing examiner will begin receiving testimony and evidence from the witnesses.

(2) Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.

(3) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the order of the proceeding may be altered or modified by the hearing examiner either upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(4) When the party first proceeding finishes his or her case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other participants to the proceedings.

(5) The hearing examiner may limit the number of witnesses whose testimony will be repetitious, and the hearing examiner may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(6) When the parties have concluded their testimony and evidence, the hearing examiner will ask the audience if

any interested person desires to make a statement. If so, the interested person will be allowed to make his or her statement subject to cross-examination and clarifying questions by any party.

(7) After interested persons make statements or if there are no such statements, the hearing examiner, at his or her discretion, may allow final arguments or take the case under advisement, and shall note the time and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The hearing examiner, upon his or her own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the agency shall not be consolidated without consent of all parties to such proceedings unless the hearing examiner finds that such consolidation will be conducive to a fair, just and proper hearing and will not result in unwarranted expense or undue delay.

(d) The hearing record. The hearing record will include:

(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 hearing examiner; and

(7) all staff memoranda or data submitted to or considered by the hearing examiner or members of the agency who are involved in making the decision.

(e) Recording the hearing. The hearing examiner will keep either a stenographic or audio record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the Texas State Board of Examiners of Marriage and Family Therapists (board) shall bear the cost of the per diem or other appearance fee for such a reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the Administrative Procedure Act (APA), §13(g). In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party

requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(f) Rules of evidence. The hearing examiner, at a hearing, a reopened hearing, or a rehearing will apply the rules of evidence under the APA, §14(a), and the following rules.

(1) Consolidation. The hearing examiner may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the hearing examiner should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Documentary evidence. Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which is typical and representative, and may, at his or her discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.

(3) Exhibits.

(A) Form. Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the hearing examiner or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(D) After hearing. Unless specifically directed by the hearing examiner, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing.

(4) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(5) Offer of proof. When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The hearing examiner may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(6) Official notice. Official notice by the hearing examiner of the board shall be in accordance with the APA, §14(q). Official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The examiner shall indicate during the course of a hearing that information of which he or she will take official notice. When an examiner's findings are based upon official notice of a material fact not appearing in the evidence of record, the examiner shall set forth in his or her proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the

filing of exceptions to the hearing examiner's proposal for decision.

**§801.369. Action After the Hearing.**

(a) Reopening of hearing for new evidence.

(1) The Texas State Board of Examiners of Marriage and Family Therapists (board) may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The board will reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice and procedural requirements will be the same as for the original hearing.

(b) Proposal for decision.

(1) If a proposal for decision is necessary under the Administrative Procedure Act (APA), §15, the hearing examiner shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the hearing examiner within the time designated by the hearing examiner.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the hearing examiner.

(4) All exceptions and replies to them shall be succinctly stated.

(c) Pleadings after close. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the hearing examiner. The party filing such instrument shall provide copies of the same to all other parties of record by first class United States mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(d) Final orders or decisions.

(1) The final order or decision will be rendered by the board.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by

law, either in the body of the order or by reference to the hearing examiner's proposal for decision.

(3) All final orders shall be signed by the executive director and the chairperson of the board; however, interim orders may be issued by the hearing examiner in accordance with his or her order of appointment.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(e) Motion for rehearing. A motion for rehearing shall be in accordance with the APA, §16, or other pertinent statute and shall be addressed to the executive director of the board and filed with the hearing examiner.

(f) Appeals. All appeals from final board orders or decisions shall be in accordance with the APA, §19 and §20, or other pertinent statute and communications regarding any appeal shall be to the executive director of the board.

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 December 9, 1993.

TRD-9333637

Bobby Schmidt  
Executive Director  
Texas State Board of  
Examiners of Marriage  
and Family Therapists

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 128. Licensure and Regulation of Marriage and Family Therapists**

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes the repeal of §§128.1, 128.2, 128.11-128.20, 128.41-128.51, 128.71-128.73, 128.91-128.94, 128.111-128.114, 128.141-128.144, 128.171-128.174, 128.201-128.203, 128.231-128.237, 128.261, 128.291-128.295, 128.321-128.322, and 128.331-128.339, concerning licensure as licensed marriage and family therapists. The sections define terms commonly used in the profession, set the standards for licensure as a licensed marriage and family therapist, establish procedures for application, examination, licensure, continuing education, and provide procedures for denial, revocation, or suspension of a license. The sections are proposed for repeal because Acts 1993, 73rd

Legislature, Regular Session, Chapter 863 (Senate Bill 1425) which amends Texas Civil Statutes, Article 4512c-1 provides the board with the authority to adopt rules independently (without Board of Health approval). New sections are being proposed for permanent adoption in this issue of the *Texas Register* under Title 22, Part XXXV, Chapter 801.

Bobby D. Schmidt, executive director, Marriage and Family Therapy Program, has determined that for each of the first five-year period that the repeal will be in effect there will be no fiscal implications to state or local government as a result of administering the repeal of these sections; however there will be an additional cost and increased revenue statement in the preamble to the proposed new sections.

Mr. Schmidt also has determined that for each year of the first five years that the proposal is in effect the public benefits anticipated as a result of enforcing these sections will be that the regulation of licensed marriage and family therapists will safeguard public health, safety, and welfare by providing a means by which the public can identify providers of marriage and family therapy services that meet minimum standards of competence in compliance with the new legislation. There will be no cost to small businesses to comply with these sections. There is no anticipated economic cost to persons who are required to comply with the repeal of existing sections; however there will be a cost as stated in the preamble of the new sections. There will be no effect on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, Marriage and Family Therapy Program, 1130 West 49th Street, Austin, Texas 78756-3183, (512) 834-6657. Comments will be accepted for 30 days after publication in the *Texas Register*. In addition a public hearing is scheduled to be held in Abilene, Texas, on Monday, January 10, 1994, at 10:00 a.m., Abilene Christian College, College of Biblical Studies Building, Room 202 (Dean's Conference Room); and another public hearing is scheduled to be held in Austin, Texas, on Monday, January 18, 1994, 10:00 a.m., at the Texas Department of Health, Exchange Building, N-218, 8407 Wall Street.

**Subchapter A. Introduction**

**• 25 TAC §128.1, §128.2**

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

§128.1. Purpose.

§128.2. Definitions.

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

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

TRD-9333390

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

◆ ◆ ◆  
Subchapter B. The Board

• 25 TAC §§128.11-128.20

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

§128.11. General/Introduction.

§128.12. Executive Director.

§128.13. Official Records.

§128.14. Impartiality and Non-discrimination.

§128.15. Policy on Disabled Applicants

§128.16. License Certificate.

§128.17. Directory.

§128.18. Consumer Information.

§128.19. Fees.

§128.20. Processing Applications.

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 December 9, 1993.

TRD-9333391

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

◆ ◆ ◆  
Subchapter C. Code of Ethics

• 25 TAC §§128.41-128.51

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

§128.41. Purpose and Scope.

§128.42. Professional Representation.

§128.43. Relationships with Clients.

§128.44. Testing.

§128.45. Drug and Alcohol Use.

§128.46. Confidentiality.

§128.47. Therapists and the Board.

§128.48. Assumed Names

§128.49. Display of License Certificate.

§128.50. Advertising and Announcements.

§128.51. Research and Publications.

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 December 9, 1993

TRD-9333392

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

◆ ◆ ◆  
Subchapter D. Application Procedures

• 25 TAC §§128.71-128.73

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1

§128.71. Purpose

§128.72. General.

§128.73. Required Application Materials.

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 December 9, 1993.

TRD-9333393

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call (512) 834-6657

◆ ◆ ◆  
Subchapter E. Criteria for Determining Fitness of Applicants for Examination and Licensure

• 25 TAC §§128.91-128.94

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

§128.91. Purpose.

§128.92. Qualifications of Applicants for Licensure.

§128.93. Materials Considered in Determining the Qualifications of Applicants.

§128.94. Finding of Non-Fitness for Licensure.

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 December 9, 1993.

TRD-9333394 Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

### Subchapter F. Academic Requirements for Examination and Licensure

#### • 25 TAC §§128.111-128.114

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

§128.111. Purpose.

§128.112. General.

§128.113. Academic Requirements.

§128.114. Academic Course Content.

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 December 9, 1993.

TRD-9333395 Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

### Subchapter G. Experience Requirements for Examination and Licensure

#### • 25 TAC §§128.141-128.144

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1

§128.141. Purpose.

§128.142. Experience Requirements.

§128.143. Supervisor Requirements.

§128.144. Other Conditions for Supervised Experience.

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 December 9, 1993.

TRD-9333396 Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

### Subchapter H. Licensure Examinations

#### • 25 TAC §§128.171-128.174

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

§128.171. Purpose.

§128.172. Frequency.

§128.173. Applying for Examination.

§128.174. Examination.

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

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

TRD-9333397 Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

### Subchapter I. Issuance of Licensure

#### • 25 TAC §§128.201-128.203

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

§128.201. Purpose.

§128.202. Issuance of Licenses.

§128.203. Reciprocity.

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



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

TRD-9333398

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

◆ ◆ ◆  
**Subchapter J. Licensure Re-  
newal and Inactive Status**

◆ ◆ ◆  
**• 25 TAC §§128.231-128.237**

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

◆ ◆ ◆  
*§128.231. Purpose.*

*§128.232. General.*

*§128.233. Staggered Renewals.*

*§128.234. License Renewal.*

*§128.235. Late Renewal.*

*§128.236. Inactive Status.*

*§128.237. Surrender of License.*

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 December 9, 1993.

TRD-9333399

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

**Subchapter K. Continuing Edu-  
cation Requirements**

◆ ◆ ◆  
**• 25 TAC §128.261**

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

The repeal is proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeal affects Texas Civil Statutes, Article 4512c-1.

◆ ◆ ◆  
*§128.261. Purpose.*

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 December 9, 1993.

TRD-9333400

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

◆ ◆ ◆  
**Subchapter L. Complaints and  
Violations**

◆ ◆ ◆  
**• 25 TAC §§128.291-128.295**

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists.

The repeals affect Texas Civil Statutes, Article 4512c-1.

◆ ◆ ◆  
*§128.291. Purpose.*

*§128.292. Procedures for Revoking, Sus-  
pending, or Denying a License to Persons  
with Criminal Backgrounds.*

*§128.293. Violations by an Unlicensed Per-  
son.*

*§128.294. Power to Sue.*

◆ ◆ ◆  
*§128.295. Complaint Procedures.*

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

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

TRD-9333401

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call: (512) 834-6657

◆ ◆ ◆  
**Subchapter M. Licensing of  
Persons with Criminal Back-  
grounds**

◆ ◆ ◆  
**• 25 TAC §128.321, §128.322**

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

The repeals affect Texas Civil Statutes, Article 4512c-1.

◆ ◆ ◆  
*§128.321. Purpose.*

*§128.322. Criminal Conviction*

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 December 9, 1993.

TRD-9333402

Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption: January 28, 1994

For further information, please call (512) 834-6657

## Subchapter N. Formal Hearings

### • 25 TAC §§128.331-128.339

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

The repeals are proposed under Acts 1993, 73rd Legislature, Regular Session, Chapter 863 (Senate Bill 1425), which amended Texas Civil Statutes, Article 4512c-1, which provide the Texas State Board of Examiners, of Marriage and Family Therapists with the authority to adopt rules concerning the regulation and licensure of marriage and family therapists

The repeals affect Texas Civil Statutes, Article 4512c-1

§128.331. Purpose.

§128.332 General

§128.333 Notice

§128.334 Parties to the Hearing.

§128.335 Subpoenas

§128.336 Depositions

§128.337 Pre-hearing Conferences

§128.338. Hearing Procedures.

§128.339 Action After the Hearing

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 December 9, 1993

TRD-9333403 Bobby Schmidt  
Executive Director  
Texas Department of  
Health

Proposed date of adoption January 28, 1994

For further information, please call. (512) 834-6657

## Part II. Texas Department of Mental Health and Mental Retardation

### Chapter 402. Client Assignment and Continuity of Services

#### Subchapter G. Determination of Least Restrictive Environment

### • 25 TAC §§402.241-402.249

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§402.241-402.249, concerning the determination of least restrictive environmental retardation services

The proposed repeal is a result of key provisions having been incorporated in the proposed new Chapter 402, Subchapter 1, concerning movement of individuals with mental retardation from department facilities, which was published in the November 2, 1993, issue of the *Texas Register*

Lelani Rose, director, Office of Budget and Fiscal Service, has determined that there will be no fiscal implications for state or local government. There is no anticipated local economic impact

Jaylon Fincannon, deputy commissioner for mental retardation services, has determined that the public benefit is the elimination of duplicative rules. There is no anticipated cost to small businesses as a result of administering the repeals as proposed. There is no anticipated economic cost to persons required to comply with the repeals as proposed

Comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P O Box 12668, Austin, Texas 78711-2668, within 30 days of publication

The sections are proposed for repeal under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§402.241. Purpose.

§402.242. Application

§402.243. Definitions

§402.244. General Principles.

§402.245. Procedure for Developing a Placement Recommendation.

§402.246. Criteria for Placement Recommendations.

§402.247. The Placement Recommendation.

§402.248. Distribution.

§402.249. References.

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 December 6, 1993

TRD-9333361 Ann K Utley  
Chair  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: January 17, 1994

For further information, please call. (512) 206-4516

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 57. Fisheries

##### Freshwater Mussels

### • 31 TAC §57.158

The Texas Parks and Wildlife Department (Commission) proposes an amendment to §57.158, which is also being published for adoption in this issue as a new section and which concern the harvest of mussels and clams from public water. The changes will correct the county location of the North Sulphur River Mussel Sanctuary, add three new sanctuary areas, and change the size limit on bleufer (*Potamilus purpuratus*) from 2.5" to 2.75". The new mussel sanctuaries will help protect the federally endangered Ouachita rock-pocketbook (*Arkansia wheeleri*) as well as a very important population of Tampico pearlymussels (*Cyrtornaias tampicoensis*). The change in the size limit for bleufer will eliminate confusion between bleufers and Tampico pearlymussels, thus easing enforcement problems.

Robin Riechers, staff economist, has determined that there will be minimal fiscal impacts to state or local governments or small businesses as a result of enforcing or administering the rule. The Department has not filed a local employment impact statement with the Texas Employment Commission because the proposed rule is identical to the rule already in place

Mr. Riechers also has determined that for each year of the first five years the section is in effect the public benefit anticipated will be to provide protection and enhancement of the mussel fishery and specifically a federal endangered mussel species through the clarification of boundaries and through the designation of new sanctuary areas. There may be economic costs to persons who are required to comply with the section.

Comments on the rule as proposed may be submitted to Earl Chilton, Staff Support Spe-

cialist, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4652 or 1 (800) 792-1112, extension 4652.

The amendment is proposed under the Texas Parks and Wildlife Code, Chapter 78, which provides the Texas Parks and Wildlife Commission with authority to regulate taking, possession, purchase, and sale of mussels and clams.

*§57.158. Mussels and Clams.*

(a) (No change.)

- (b) Bag, possession and size limits.  
 (1) (No change.)  
 (2) It is unlawful for any person

to:

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

(C) take or possess mussels and clams, including their shells, of the following species that will pass through a ring with an inside diameter (I.D.) specified for that species.

<u>Species</u>	<u>Ring I.D. in inches</u>
Washboard, <i>Megalonaias nervosa</i>	4.00
Threeridges and roundlakes, <i>Amblema spp.</i>	2.75
Mapleleafs and pimplebacks, <i>Quadrula spp.</i>	2.75
Tampico pearlymussel, <i>Cyrtonaias tampicoensis</i>	2.75
<u>Bleufer, <i>Potamilus purpuratus</i></u>	<u>2.75</u>
All Other Species of Freshwater Mussels	2.50

(c) (No change.)

(d) Seasons, Times, and Places.

(1) (No change.)

(2) All public waters of the state are open to mussel and clam harvest except that mussels and clams may not be taken from the following rivers or creeks and their tributaries:

(A) North Sulphur River from State Highway 50 in Fannin [Hunt] County to State Highway 24 in Delta and Lamar Counties;

(B)-(R) (No change.)

(S) Pine Creek from its source in Lamar County to its confluence with the Red River, in Red River County;

(T) Sanders Creek from its source in Fannin County to the confluence with the Red River in Lamar County; and

(U) Elm Creek from its source downstream to the dam at Elm Creek Lake at Ballinger City Park in Runnels County.

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

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

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

TRD-9333479

Paul M. Shinkawa  
 Director, Legal Services  
 Texas Parks and Wildlife  
 Department

Earliest possible date of adoption:

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433

◆ ◆ ◆  
**Part X. Texas Water  
 Development Board**

**Chapter 379. Advisory  
 Committees**

• 31 TAC §§379.1-379.7

The Texas Water Development Board (board) proposes new §§379.1-379.7, concerning the adoption of rules for the board's advisory committees as required by Texas Civil Statutes, Article 6252-33. The new rules will define the membership, purpose, task, and expiration date of the advisory committees.

Pamela Ansbury, director of finance, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the rules are in effect will be an estimated cost of approximately \$52,781 for the first year the section will be in effect and approximately \$68,281 for each of the next four years. There will be no fiscal implications for local government.

Ms. Ansbury 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 to provide guidance and information to the board regarding important public water issues. For each year of the first five years the sections as proposed are in effect, there will be no effect on small businesses and no anticipated economic cost to persons required to comply with rules as proposed. The board staff has determined that the rules will have no impact on local economics. The new sections are proposed pursuant to the Texas Water Code, §6.101, which requires the board to adopt rules necessary to carry out its powers and duties, and Texas Civil Statutes, Article 6252-33, which require the board to adopt rules for advisory committees to the board.

Comments on the proposal may be submitted to Lisa Adelman, Texas Water Development Board, Legal Division, P.O. Box 13231, Austin, Texas 78711-3231, (512) 475-2052.

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

Board—The Texas Water Development Board.

EDAP—Economically Distressed Areas Program.

Executive Administrator—The Executive Administrator of the board.

TNRIS—The Texas Natural Resources Information System.

§379.2. *General Provisions.*

(a) These rules are adopted in accordance with Texas Civil Statutes, Article 6252-33, to define the membership, purpose, task and expiration date of advisory committees to the board.

(b) An advisory committee shall select from among its members a presiding officer. The presiding officer shall preside over the advisory committee and report to the executive administrator or staff of the board.

(c) An advisory committee must be composed of a reasonable number of members not to exceed 24 members.

§379.3. *Texas Natural Resources Information System Task Force.*

(a) Purpose and Task. As required under the Texas Water Code, §16.021, the TNRIS task force shall provide guidance in the development and maintenance of a centralized information system incorporating all Texas natural resource data, socioeconomic data related to natural resources, and indexes related to the data collected by state agencies and other entities. This task force also sets policies and provides guidance for TNRIS as the information system for the entire state.

(b) Composition. One member from each of the TNRIS participating state agencies designated by the executive administrator. Each participating agency shall select that agency's representative for the TNRIS task force. The executive administrator may designate other committee members.

(c) Manner of Reporting. The TNRIS task force will set policies for TNRIS, review projects, and relay information regarding TNRIS activities to their agencies.

(d) Expiration Date. This committee is automatically abolished on September 1, 1997, unless the board amends this subsection to establish a different date.

§379.4. *Economically Distressed Areas Program Innovative and Alternative Technology Committee.*

(a) Purpose and Task. The committee will provide guidance to the executive administrator on the design, construction and monitoring of innovative and alternative technology projects. The committee will provide information to evaluate and recommend funding of eligible projects to assure optimum use of state and federal funds.

(b) Composition. The committee shall be composed of three representatives from the board's staff, three representatives

from the Texas Natural Resources Conservation Commission's staff, three from the United States Environmental Protection Agency's staff and one representative from the Governor's On-Site Wastewater Treatment Research Council. The executive administrator may designate other committee members.

(c) Manner of Reporting. The members will review and evaluate applications received by the board for financial assistance to design, construct, demonstrate, and evaluate innovative and alternative technology projects for the colonias and shall report its recommendation to the executive administrator.

(d) Expiration Date. This committee is automatically abolished on September 1, 1997, unless the board amends this subsection to establish a different date.

§379.5. *Consensus Water Plan Technical Advisory Committees.*

(a) Purpose and Task. The executive administrator may establish committees to provide public input to the Texas Water Plan, as prepared by the executive administrator under the Texas Water Code, §16.051 for adoption by the board. The committee will examine various water issues and advise the executive administrator with a written report of recommendations on needed planning and policy actions.

(b) Composition. The committees will be composed of representatives from the board, the Texas Natural Resources Conservation Commission, the Texas Parks and Wildlife Department, and an array of other groups with interests in water management, as well as public advocate and environmental groups. The executive administrator may designate other committee members.

(c) Manner of Reporting. The committees shall submit written comments to the executive administrator and may also give verbal suggestions and guidance to the staff.

(d) Expiration Date. Each committee formed hereunder is automatically abolished on September 1, 1997, unless the board amends this subsection to establish a different date.

§379.6. *Texas Bays and Estuaries Program Technical Advisory Committees.*

(a) Purpose and Task. Under the authority of the Texas Water Code, §§16.012, 16.051, and 16.058, the committee is formed to provide scientific guidance to the executive administrator in the proper design of bay and estuary studies.

(b) Composition. The executive administrator may request national and inter-

national experts from a wide range of scientific and engineering disciplines relevant to the mandated studies to serve on the committee for terms specified by the executive administrator. The executive administrator may designate other committee members.

(c) Manner of Reporting. After site visits and document reviews, committee members shall submit written comments to the board's staff and may also give verbal suggestions and guidance to the staff.

(d) Expiration Date. This committee is automatically abolished on September 1, 1997, unless the board amends this subsection to establish a different date.

§379.7. *Instream Flow Advisory Committee.*

(a) Purpose and Task. Under authority of the Texas Water Code, §§16.012, 16.013, 16.014, and 16.051, the committee shall provide scientific guidance to the executive administrator in the proper design of instream flow surveys.

(b) Composition. The executive administrator may request local, state, and national experts from a wide range of scientific and engineering disciplines relevant to the required surveys to serve on the committee for terms specified by the executive administrator. The executive administrator may designate other committee members.

(c) Manner of Reporting. After site visits and document reviews, committee members submit written comments to the board's staff and may also give verbal suggestions and guidance to the staff.

(d) Expiration Date. This committee is automatically abolished on September 1, 1997, unless the board amends this subsection to establish a different date.

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 December 10, 1993.

TRD-9333494

Craig D Pedersen  
Executive Administrator  
Texas Water Development  
Board

Earliest possible date of adoption. January 17, 1994

For further information, please call: (512) 837-9236



# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## Part I. Texas Department of Human Services

### Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

#### Subchapter S. Reimbursement Methodology for Nursing Facilities

##### • 40 TAC §19.1802

The Texas Department of Human Services (DHS) proposes an amendment to §19.1802, concerning cost reporting procedures, in its Long-Term Care Nursing Facility Requirements chapter. The purpose for the amendment is to remove inconsistencies between the penalties described in the rate-setting methodology and the penalties for administrative contract violations.

Burton F. Railford, commissioner, 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. Railford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the elimination of inconsistencies in existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Pamela Robers at (512) 450-4051 in DHS's Rate Analysis Department. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-322, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001, 22.002, and 32.001-32.041.

*§19.1802. Cost Reporting Procedures.* Each provider must submit financial and statistical information on cost report forms provided by the Texas Department of Human Services (DHS) or on fac-

similes which are formatted according to DHS specifications and are preapproved by DHS staff.

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

(3) Recordkeeping requirements. Each provider must maintain records according to the requirements stated in §69.202 of this title (relating to Contractor's Records). Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Failure to maintain records that support the information submitted on the cost report in a form which is in compliance with DHS's chart of accounts for long-term care providers constitutes an administrative contract violation [grounds for contract cancellation and recovery of liquidated damages from the provider]. In the case of an administrative contract violation, penalties are applied as specified in §19.2207 of this title (relating to Administrative Contract Violations). [In cases of noncompliance, DHS allows providers 90 days, subsequent to notification, to comply with DHS recordkeeping requirements. DHS may withhold all vendor payments to the provider during those 90 days or until the deficiency is corrected. If the provider does not correct the deficiencies within 90 days from the date of notification, DHS may cancel the provider's contract and recover liquidated damages from the provider, if any are specified in the contract.]

(4)-(8) (No change.)

(9) Failure to file an acceptable cost report. Failure to file an acceptable cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §19.2207 of this title (relating to Administrative Contract Violations). [If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, DHS may withhold vendor payments to that provider until the deficiencies are corrected.]

(10) (No change.)

(11) On-site cost report audits.

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

(C) Access to records. Each provider entity or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on Medicaid cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. Failure to allow inspection of pertinent records within 10 workdays following written notice from DHS constitutes an

administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §19.2207 of this title (relating to Administrative Contract Violations). If a central office or other entity pertaining to a multi-facility operation refuses access to records, then the penalties are extended to all related parties having Medicaid contracts with DHS. [If a provider does not allow inspection of pertinent records within 30 days following written notice from DHS, a hold is placed on vendor payments until access to the records is allowed. If a central office or other entity pertaining to a multi-facility operation refuses access to records, then the vendor hold is extended to all related parties having Medicaid contracts with DHS.] Additional rules regarding access to records that are out-of-state may be found in the Human Resources Code, Chapter 24.

(D)-(E) (No change.)

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

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

TRD-9333359

Nancy Murphy  
Section Manager, Policy  
and Document Support  
Texas Department of  
Human Services

Proposed date of adoption: March 1, 1994

For further information, please call: (512) 450-3765

## Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

### Subchapter D. Reimbursement Methodology

##### • 40 TAC §27.403

The Texas Department of Human Services (DHS) proposes an amendment to §27.403, concerning cost reporting procedures, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) chapter. The purpose for the amendment is to remove inconsistencies between the penalties described in the rate-setting methodology and the penalties for administrative contract violations.

Burton F. Railford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Railford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a

result of enforcing the amendment will be the elimination of inconsistencies in existing rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Pamela Robers at (512) 450-4051 in DHS's Rate Analysis Department. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-322, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §§22.001, 22.002, and 32.001-32.041.

#### §27-403 Cost Reporting Procedures.

(a) Cost reports. Each provider must submit financial and statistical information on cost report forms provided by the Texas Department of Human Services (DHS) or on facsimiles which are formatted according to DHS specifications and are preapproved by DHS staff.

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

(e) Noncompliance with recordkeeping and chart of accounts requirements. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Failure to maintain records that support the information submitted on the cost report in a form which is in compliance with DHS's chart of accounts for long-term care providers constitutes an administrative contract violation [grounds for contract cancellation and recovery of liquidated damages from the provider]. In the case of an administrative contract violation, penalties are applied as specified in §27.217(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements). [In cases of noncompliance, DHS allows providers 90 days, subsequent to notification, to comply with DHS recordkeeping requirements. DHS may withhold all vendor payments to the provider during those 90 days or until the deficiency is corrected. If the provider does not correct the deficiencies within 90 days from the date of notification, DHS may cancel the provider's contract and recover liquidated damages from the provider, if any are specified in the contract.]

(f)-(j) (No change.)

(k) Failure to file an acceptable cost report. Failure to file an acceptable cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §27.217(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements). [If a provider fails to file a cost report or files an unacceptable report and refuses to make necessary changes, DHS may withhold the provider's vendor payments until the deficiencies are corrected.]

(l) (No change.)

(m) On-site cost report audits. DHS conducts on-site cost report audits as follows.

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

(3) Access to records. Each provider or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on Medicaid cost reports. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the provider. Failure to allow inspection of pertinent records within 10 workdays following written notice from DHS constitutes an administrative contract violation. In the case of an administrative contract violation, penalties are applied as specified in §27.217(c)(2) of this title (relating to Sanction Provisions for Violations of Title XIX ICF-MR Contractual Agreements). If a central office or other entity pertaining to a multifacility operation refuses access to records, then the penalties are extended to all related parties having Medicaid contracts with DHS. [If a provider does not allow inspection of pertinent records within 30 days following written notice from DHS, DHS withholds vendor payments until the provider allows access to the records. If a central office or other entity in a multifacility operation refuses access to pertinent records, DHS extends the vendor hold to all related parties that have Medicaid contracts with DHS.] Additional rules regarding access to records that are out of state may be found in the Human Resources Code, Chapter 24.

(4) (No change.)

(n) (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 December 9, 1993.

TRD-9333358

Nancy Murphy  
Liaison  
Texas Department of  
Human Services

Proposed date of adoption: March 1, 1994

For further information, please call: (512) 450-3765

## Chapter 79. Legal Services

### Subchapter Z. Reimbursement

#### Rates for Prosecution of [Food Stamp] Intentional Program Violations

##### • 40 TAC §79.2501

The Texas Department of Human Services (DHS) proposes an amendment to §79.2501, concerning rates of reimbursement, in its Legal Services rule chapter. The purpose of the amendment is to establish payment amounts for contested and uncontested fraud prosecution cases involving Aid to Families with Dependent Children (AFDC) program and Food Stamp program benefits. In this issue of the *Texas Register*, DHS is withdrawing its proposed new §75.10, Reimbursement Rates for Fraud Prosecution, which appeared in the November 23, 1993, issue *Texas Register* (18 TexReg 8667).

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be appropriate reimbursement of county and district attorneys for the costs involved in prosecuting public assistance fraud cases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Sharyn Belk at (512) 450-4231 in DHS's Office of Inspector General. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-296, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public assistance and nutritional assistance programs. The amendment implements the Human Resources Code, §33.011(e).

§79.2501. Rates of Reimbursement. The Texas Department of Human Services (DHS) contracts with county commissioners for prosecuting Aid to Families with Dependent Children (AFDC) and Food Stamp intentional program violations. As approved by the Texas Board of Human

Services, DHS passes to the local prosecutors the federal share of the cost per case, and the local prosecutors supply the state match. Based on a review and analysis of prosecutors' costs, DHS has established the payment rates as follows: [Reimbursement for prosecuting these cases is, as approved by the Texas Board of Human Services, 75% of actual prosecution cost as determined by a representative survey of the actual cost of prosecuting both contested and uncontested food stamp intentional program violations. The survey is conducted by the agency's Economic Analysis Division. ]

- (1) \$420 for uncontested cases; and
- (2) \$1,017 for contested cases.

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 December 9, 1993.

TRD-9333357 Nancy Murphy  
Liaison  
Texas Department of  
Human Services

Proposed date of adoption: March 1, 1994  
For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Part XIX. Texas**  
**Department of Protective**  
**and Regulatory Services**  
**Chapter 708. Medicaid**  
**Targeted Case Management**  
**Program**

**Program Requirements**  
• 40 TAC §§708.1-708.4

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §§708.1-708.4, concerning the introduction, eligibility criteria, services, and providers of service, in new Chapter 708, Medicaid Targeted Case Management Program. The purpose of the proposal is to establish the TDPRS Medicaid Targeted Case Management Program, which serves Medicaid recipients who are receiving foster care, child protective services, adoption assistance, or adult protective services. The targeted case management services include assessment, case planning, case coordination, and case plan reassessment, and are consistent with the current practice in TDPRS.

Jerry Abel, chief fiscal officer, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal. Implementation is planned to increase the federal funds available for TDPRS programs;

however, the amount of the increase is not currently known and statistical and expenditure information to form projections will not be available until after implementation.

Mr. Abel also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be increased federal funds available for TDPRS programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Mary Ann Harvey at (512) 832-3772 in TDPRS's Research and Development department. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-275, Texas Department of Protective and Regulatory Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (503), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS. The new sections implement TDPRS's response to the SB-5, General Appropriations Act, 73rd Legislature, Regular Session, Article V, §154 (Texas Performance Review Riders).

*§708.1. Introduction.* The Texas Department of Protective and Regulatory Services (TDPRS) Medicaid Targeted Case Management Program is established effective January 1, 1994, by TDPRS, in cooperation with the Texas Health and Human Services Commission, the single-state Medicaid agency, under the authority of Title XIX of the Social Security Act, §1915(g)(1)-(2), and Texas Revised Civil Statutes, Article 4413 (502), §16.

*§708.2. Eligibility Criteria.* Individuals eligible for the Texas Department of Protective and Regulatory Services Medicaid Targeted Case Management Program are Medicaid recipients receiving foster care, child protective services, adoption assistance, or adult protective services.

*§708.3. Services.* Case management services are services which will assist the target population in gaining access to needed medical, social, educational, and other services. These services include services covered under the Texas Medicaid State Plan, as well as other services not provided under the Texas Medicaid State Plan. Case management services include:

- (1) Assessment.

(A) The case manager performs assessment activities related to:

(i) recipient requests for services; and

(ii) community referrals requesting assessment of client needs for services.

(B) At screening, the case manager makes the initial determination of service need.

(C) After the need for services has been determined, the case manager identifies the recipient's medical, social, educational, and other conditions and needs through face-to-face contact with the recipient and consultation with other professionals, the recipient's caregiver(s), and other parties.

(2) Case planning. At the completion of the assessment, a case plan is developed through a collaborative process involving the recipient, the caregiver, and other parties as appropriate. The case plan identifies:

(A) the services and resources required to meet the client's needs; and

(B) how the services might be most appropriately delivered.

(3) Service coordination and monitoring. Through linkage, coordination, facilitation, and advocacy, the case manager ensures the recipient's access to the services and resources identified in the case plan and ensures that services are being delivered and used as agreed to in the case plan. This is accomplished by:

(A) personal, mail, and telephone contacts with the recipient and service providers; and

(B) meetings with the recipient, his caretaker and/or family, and providers.

(4) Case plan reassessment. The case manager determines whether or not medical, social, educational, or other services continue to be adequate to meet the goals identified in the case plan. Reassessment decisions include those to continue, change, or terminate services. Activities include assisting recipients to access different medical, social, educational, or other needed services beyond those already identified and provided. Reassessment activities include, but are not limited to:

- (A) staffings; and

(B) mail, personal, and telephone contacts with involved parties.

**§708.4. Providers of Service.** Providers of the Texas Department of Protective and Regulatory Services (TDPRS) Medicaid Targeted Case Management Program services are caseworkers providing foster care, protective services, adoption assistance, and

adult protective services in the state and regional offices of TDPRS. Caseworkers who provide these services must meet a set of minimum qualifications as established by TDPRS.

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 December 9, 1993.

TRD-9333360

Nancy Murphy  
Liaison  
Texas Department of  
Protective and  
Regulatory

Proposed date of adoption: February 15, 1994

For further information, please call: (512) 450-3765

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## Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

*(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5.96 and 5.97.*

*The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)*

The Commissioner of Insurance at a public hearing under Docket Number 2083, scheduled for 9:00 a.m. on January 27, 1994, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a petition by the Continental Insurance Companies proposing the amendment of Rule II-A-2 in the Farm and Ranch Section and Rule II-A-2 in the Farm and Ranch Owners Section of the Texas Personal Lines Manual to reduce the requirement of ten or more acres of land to three acres as a qualifying factor for eligibility for Farm and Ranch and Farm and Ranch Owners policies. The Commissioner will consider at the same time an alternative staff proposal to repeal these two rules to eliminate in its entirety the requirement of ten or more acres of land as a qualifying factor for eligibility for Farm and Ranch and Farm and Ranch Owners policies. Neither proposal would in any

manner change or eliminate the other manual requirements for property to qualify for coverage under Farm and Ranch and Farm and Ranch Owners policies.

The proposed rule amendments by Continental Insurance are set forth in a petition filed October 20, 1993. The proposed repeal by staff is set forth in a petition filed on November 30, 1993.

Continental Insurance is requesting the change to provide farm and ranch coverage for insureds that would otherwise be eligible for this coverage but have less than ten acres. An example cited by Continental Insurance in its petition is an emu farm. According to the petition, emus, like ostriches, can be successfully raised on less than ten acres; however, the emu farms have buildings and equipment which do not qualify the residence for a homeowners policy. Without the proposed amendment, the emu and ostrich farmers cannot obtain needed coverages in the standard market.

The staff, however, proposes to eliminate any acreage requirement as a qualifying factor for coverage under Farm and Ranch and Farm and Ranch Owners policies because there are other eligibility rules that require the farm and ranch operations to be more than incidental to a dwelling occupancy of the premises in order to qualify for this type of coverage. According to the staff petition, because of these other eligibility rules, there is no reason to continue an acreage requirement if insurers are willing to write Farm and Ranch and Farm and Ranch Owners policies on property of less than ten acres. Adoption of the proposed repeal will result in individual insurers determining whether to cover operations that otherwise qualify for Farm and Ranch or Farm and Ranch Owners policies under these policies regardless of the amount

of acreage, rather than the determination being based on a manual rule prohibition.

Copies of the full text of both proposals are available for review in the Office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the rule amendments, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number O-1193-31).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Administrative Procedure Act, 73rd Legislative, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified at Government Code, Title 10, Chapter 2001)).

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

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

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

TRD-9333364

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

For further information, please call: (512) 463-6328

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# Withdrawn Sections

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

## TITLE 1. ADMINISTRATION

### Part II. Texas Ethics Commission

#### Chapter 34. Conduct of Lobbyists

##### Subchapter A. Restrictions on Lobby Expenditures

###### • 1 TAC §34.7

The Texas Ethics Commission has withdrawn from consideration for permanent adoption a proposed new §34.7, which appeared in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7069). The effective date of this withdrawal is December 13, 1993.

Issued in Austin, Texas, on December 13, 1993.

TRD-9333591

Andrew Martin  
General Counsel  
Texas Ethics Commission

Effective date: December 13, 1993

For further information, please call: (512) 463-5784

## TITLE 22. EXAMINING BOARDS

### Part IX. Texas State Board of Medical Examiners

#### Chapter 163. Licensure

###### • 22 TAC §§163.1-163.15

The Texas State Board of Medical Examiners has withdrawn from consideration for perma-

nent adoption a proposed new §§163.1-163.15, which appeared in the October 19, 1993, issue of the *Texas Register* (18 TexReg 7265). The effective date of this withdrawal is December 10, 1993.

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

TRD-9333572

Pat Wood  
Secretary to the Executive  
Director/Director of  
Permits  
Texas State Board of  
Medical Examiners

Effective date: December 10, 1993

For further information, please call: (512) 834-7728, Ext. 402

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 29. Purchased Health Services

##### Subchapter L. General Administration

###### • 25 TAC §§29.1104, 29.1126, 29.1127

The Texas Department of Health has withdrawn the emergency effectiveness of amendments to §§29.1104, 29.1126, and 29.1127, concerning the Purchased Health Services. The text of the emergency amendments appeared in the August 20, 1993, issue of the *Texas Register* (18 TexReg 5543). The effective date of this withdrawal is December 15, 1993.

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

TRD-9333298

Linda Kotek  
General Counsel  
Texas Department of  
Health

Effective date: December 15, 1993

For further information, please call: (512) 458-7236

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 75. Investigations

##### General Procedures

###### • 40 TAC §75.10

The Texas Department of Human Services has withdrawn from consideration for permanent adoption a proposed new §75.10, which appeared in the November 23, 1993, issue of the *Texas Register* (18 TexReg 8667). The effective date of this withdrawal is December 9, 1993.

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

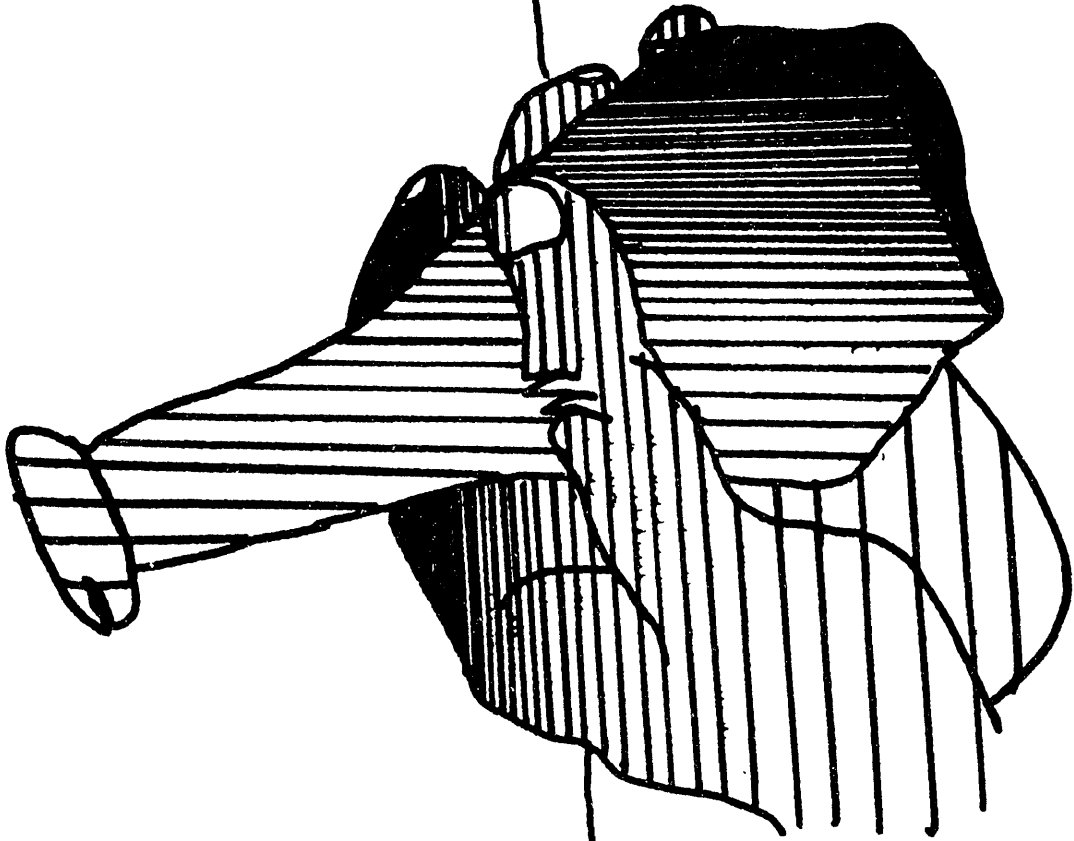
TRD-9333356

Nancy Murphy  
Section Manager  
Texas Department of  
Human Services

Effective date: December 9, 1993

For further information, please call: (512) 450-3765

Contour Drawing 9-22



Name: Hooper Kanta  
Grade: 12  
School: Skyline High School, Dallas ISD

# Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 1. ADMINISTRATION

### Part II. Texas Ethics Commission

#### Chapter 6. Internal Operations

##### Subchapter A. Commission Meeting Rules

- 1 TAC §§6.1-6.12, 6.31-6.35, 6.71, 6.81

The Texas Ethics Commission adopts the repeal of §§6.1-6.12, 6.31-6.35, 6.71, and 6.81, concerning internal operations and commission meeting rules. The repeals are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 6995).

These sections are being replaced by a more comprehensive recodification of commission rules, resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993

TRD-9333516

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

#### Chapter 6. Organization and Administration

##### Subchapter A. General Rules

- 1 TAC §§6.1, 6.3, 6.5, 6.7, 6.9

The Texas Ethics Commission adopts new §§6.1, 6.3, 6.5, 6.7, and 6.9, concerning the

organization and administration of the commission. Section 6.1 is adopted with changes, and §§6.3, 6.5, 6.7, and 6.9 are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 6995).

The new sections define words and phrases used in rules adopted by the commission, and provide guidance as to the purpose and construction of commission rules, they generally describe the powers, organization, and operation of the commission, establish procedures followed by the commission in scheduling and holding its meetings and public hearings held in connection with rule-making activities, and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

The new sections will set forth basic guidelines for the orderly processing and administration of the Texas Ethics Commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

**§6.1 Definitions.** The following words and terms, when used in Part II, shall have the following meanings, unless the context clearly indicates otherwise.

**Act**—The Government Code, Chapter 571 (relating to Texas Ethics Commission)

**Administrative Procedure Act**—The Government Code, Chapter 2001 (relating to Administrative Procedure).

**Agency**—The state agency governed by the commission, as it functions and operates through the administrative staff hired by the commission and its executive director.

**Agency office**—The offices of the agency located at 1101 Camino La Costa, Austin, Texas 78752, with a mailing address of P.O. Box 12070, Austin, Texas 78711.

**Commission**—The Texas Ethics Commission, as constituted and described in the Texas Constitution, Article 3, §24a.

**Document**—A report, complaint, response, letter, or any other written material.

**Executive Director**—The person em-

ployed by the commission to serve as the agency's chief administrative officer, or any other employee of the commission acting as the designee of the executive director.

**Family member or relative**—An individual who is related within the second degree of affinity or consanguinity, as defined by the Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity).

**Filer**—A person required to file a report with the commission or a local filing authority in accordance with this title.

**Individual**—A human being who has been born and is alive.

**Local filing authority**—A public servant other than the Texas Ethics Commission with whom a filer must file a report in accordance with this title, as identified in §20.5 of this title (relating to Reports Filed with a County Filing Authority) and §20.7 of this title (relating to Reports Filed with Other Local Filing Authority).

**Open Meetings Law**—The Government Code, Chapter 551 (relating to Open Meetings).

**Open Records Law**—The Government Code, Chapter 552 (relating to Open Records).

**Person**—An individual, representative, corporation, association, or other entity, including any non-profit corporation, or any agency or instrumentality of federal, state, or local government.

**Postmark**—A postal cancellation by the United States Postal Service that contains the post office name, state, and zip code and the month, day, and year the canceling post office accepted custody of the material.

**Presiding officer**—The person elected to serve as the commission's chairman or chairwoman under §6.21 of this title (relating to Officers of the Commission).

**Report**—Any document or other information required to be filed under this title.

**Staff**—Employees of the commission, hired by the commission or the executive director.

**Title 15**—The Election Code, Title 15 (relating to Regulating Political Funds and Campaigns).

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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Jim Mathleson  
Assistant General Counsel  
Texas Ethics Commission

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



### Subchapter B. Officers and Employees of the Commission

- 1 TAC §§6.21, 6.23, 6.25

The Texas Ethics Commission adopts new §§6.21, 6.23, and 6.25, concerning the organization and administration of the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 6997).

The new sections define words and phrases used in rules adopted by the commission; and provide guidance as to the purpose and construction of commission rules; they generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings and public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

The new sections will set forth basic guidelines for the orderly processing and administration of the Texas Ethics Commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathleson  
Assistant General Counsel  
Texas Ethics Commission

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### Subchapter C. Commission Meetings

- 1 TAC §§6.31, 6.33, 6.35, 6.37, 6.39, 6.41, 6.43, 6.45, 6.47

The Texas Ethics Commission adopts new §§6.31, 6.33, 6.35, 6.37, 6.39, 6.41, 6.43, 6.45, and 6.47, concerning the organization and administration of the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 6998).

The new sections define words and phrases used in rules adopted by the commission; and provide guidance as to the purpose and construction of commission rules; they generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings and public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

The new sections will set forth basic guidelines for the orderly processing and administration of the Texas Ethics Commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathleson  
Assistant General Counsel  
Texas Ethics Commission

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



### Subchapter D. Rulemaking Procedures

- 1 TAC §§6.61, 6.63

The Texas Ethics Commission adopts new §§6.61 and 6.63, concerning the organization and administration of the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 6999).

The new sections define words and phrases used in rules adopted by the commission; and provide guidance as to the purpose and

construction of commission rules; they generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings and public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

The new sections will set forth basic guidelines for the orderly processing and administration of the Texas Ethics Commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathleson  
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Texas Ethics Commission

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



### Subchapter E. Agency Fees and Charges

- 1 TAC §§6.81, 6.83, 6.85, 6.87

The Texas Ethics Commission adopts new §§6.81, 6.83, 6.85, and 6.87, concerning the organization and administration of the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 6999).

The new sections define words and phrases used in rules adopted by the commission; and provide guidance as to the purpose and construction of commission rules; they generally describe the powers, organization, and operation of the commission; establish procedures followed by the commission in scheduling and holding its meetings and public hearings held in connection with rule-making activities; and establish procedures and charges for obtaining documents and other services provided by the commission for which a fee is imposed.

The new sections set forth basic guidelines for the orderly organization and administration of the Texas Ethics Commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

## Chapter 8. Legislative Per Diem

### • 1 TAC §8.1

The Texas Ethics Commission adopts the repeal of §8.1, concerning legislative per diem. The repeal is adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7000)

The repealed section is being replaced by a more comprehensive recodification of commission rules, resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning the filing of reports mandated by any statute administered or enforced by the commission.

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-9333517

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

## Chapter 8. Advisory Opinions

### • 1 TAC §§8.1, 8.3, 8.5, 8.7, 8.9, 8.11, 8.13, 8.15, 8.17, 8.19, 8.21

The Texas Ethics Commission adopts new §§8.1, 8.3, 8.5, 8.7, 8.9, 8.11, 8.13, 8.15, 8.17, 8.19, and 8.21, concerning advisory opinions by the commission. Section 8.5 is adopted with changes, and sections 8.1, 8.3, 8.7, 8.9, 8.11, 8.13, 8.15, 8.17, 8.19, and 8.21 are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7000).

The new sections generally describe the procedures used by the commission in issuing advisory opinions. Among other things, Chapter 8 sets forth definitions; the laws within the opinion jurisdiction of the commission, persons eligible to request opinions; the review and processing of opinions; the time period for issuance of opinions; and the compilation and publication of opinions

These sections will set forth basic guidelines for the orderly processing and timely issuance of opinions by the Texas Ethics Commission

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

*§8.5. Persons Eligible to Receive an Advisory Opinion.* A person who is subject to one of the laws described in §8.3(a) of this title (relating to Subject of Advisory Opinions) may request an opinion that advises how the law applies to that person in a specific real or hypothetical factual situation.

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

## Chapter 9. Advisory Opinions

### • 1 TAC §§9.1, 9.3, 9.5, 9.7

The Texas Ethics Commission adopts the repeal of §§9.1, 9.3, 9.5, and 9.7, concerning rules for advisory opinions. The repeals are

adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7001).

The repealed sections are being replaced by a more comprehensive recodification of commission rules, resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No public comments were received regarding adoption of the repeals

The repeals are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission

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 18, 1993.

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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

## Chapter 10. Practice and Procedure

### Subchapter A. General Provisions

#### • 1 TAC §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33, 10.35, 10.37, 10.39, 10.41, 10.43

The Texas Ethics Commission adopts the repeal of §§10.1, 10.3, 10.5, 10.7, 10.9, 10.11, 10.13, 10.15, 10.17, 10.19, 10.21, 10.23, 10.25, 10.27, 10.29, 10.31, 10.33, 10.35, 10.37, 10.39, 10.41, and 10.43, concerning general provisions of practice and procedures rule. The repeals are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7002)

The repealed sections are being replaced by a more comprehensive recodification of commission rules

No public comments were received regarding adoption of the repeals

The repeals are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning the filing of reports mandated by any statute administered or enforced by the commission

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

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**Chapter 10. Ethics Training Programs**

◆ ◆ ◆  
• **1 TAC §10.1, §10.3**

The Texas Ethics Commission adopts new §10.1, and §10.3, concerning training programs offered by the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7002).

The new sections generally describe the establishment of a program to provide training relating to the laws administered and enforced by the commission and related laws for legislators, state employees, and other persons whose conduct is regulated by those laws. Tuition fees are established for those other persons attending certain training programs.

The new sections authorize the establishment of an ethics training program to be administered by the staff of the commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

**Subchapter C. Sworn Complaints**

• **1 TAC §§10.111, 10.113, 10.115, 10.117, 10.119, 10.131, 10.133, 10.135, 10.137**

The Texas Ethics Commission adopts the repeal of §§10.111, 10.113, 10.115, 10.117, 10.119, 10.131, 10.133, 10.135, and 10.137, concerning sworn complaint under practice and procedure rules. The repeals are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7003).

The repealed sections are being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No public comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeals rules concerning the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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Proposal publication date: October 15, 1993

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

◆ ◆ ◆  
**Subchapter D. Miscellaneous**

◆ ◆ ◆  
• **1 TAC §10.311, §10.313**

The Texas Ethics Commission adopts the repeal of §10.311 and §10.313, concerning miscellaneous provisions under practice and procedure rules. The repeals are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7004).

The repealed sections are being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No public comments were received regarding adoption of the repeals

The repeals are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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Proposal publication date: October 15, 1993

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

◆ ◆ ◆  
**Chapter 11. Speaker of the House of Representative**

◆ ◆ ◆  
**Subchapter A. Campaign Reporting**

◆ ◆ ◆  
• **1 TAC §§11.1, 11.3, 11.5, 11.7, 11.9**

The Texas Ethics Commission adopts the repeal §§11.1, 11.3, 11.5, 11.7, and 11.9, concerning campaign reporting rules for the speaker of the house of representative's race. The repeals are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7004).

The repeals are being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No public comments were received regarding adoption of the repeals

The repeals are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993.

TRD-9333552

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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Proposal publication date: October 15, 1993

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

## Chapter 12. Sworn Complaints

### Subchapter A. General Provisions and Procedures

- 1 TAC §§12.1, 12.3, 12.5, 12.7, 12.9, 12.11, 12.13, 12.15, 12.17, 12.19, 12.21, 12.23, 12.25, 12.27, 12.29, 12.31, 12.33, 12.35, 12.37, 12.39

The Texas Ethics Commission adopts new §§12.1, 12.3, 12.5, 12.7, 12.9, 12.11, 12.13, 12.15, 12.17, 12.19, 12.21, 12.23, 12.25, 12.27, 12.29, 12.31, 12.33, 12.35, 12.37, and 12.39, concerning the procedures used in the processing of sworn complaints by the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7004).

The new section describe the general provisions and procedures under which sworn complaints will be filed and processed: they describe the procedures in the filing and initial processing of a sworn complaint; and provide guidelines in the investigation and preliminary review of a sworn complaint, the informal hearing stage of a sworn complaint, and the formal hearing stage of a sworn complaint.

The new sections set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993.

TRD-9333537  
Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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Proposal publication date: October 15, 1993

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

### Subchapter B. Filing and Initial Processing of a Sworn Complaint

- 1 TAC §§12.51, 12.53, 12.55, 12.57, 12.59, 12.61, 12.63, 12.65, 12.67, 12.69, 12.71

The Texas Ethics Commission adopts new §§12.51, 12.53, 12.55, 12.57, 12.59, 12.61, 12.63, 12.65, 12.67, 12.69, and 12.71, con-

cerning the procedures processing of sworn complaints by the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7007).

The new section describe the general provisions and procedures under which sworn complaints will be filed and processed: they describe the procedures in the filing and initial processing of a sworn complaint; and provide guidelines in the investigation and preliminary review of a sworn complaint, the informal hearing stage of a sworn complaint, and the formal hearing stage of a sworn complaint.

The new sections set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993.

TRD-9333536  
Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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Proposal publication date: October 15, 1993

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

### Subchapter C. Investigation and Preliminary Review

- 1 TAC §§12.81, 12.83, 12.85, 12.87, 12.89

The Texas Ethics Commission adopts new §§12.81, 12.83, 12.85, 12.87, and 12.89, concerning the procedures used in the processing of sworn complaints by the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7009).

The new sections describe the general provisions and procedures under which sworn complaints will be filed and processed; they describe the procedures in the filing and initial processing of a sworn complaint; and provide guidelines in the investigation and preliminary review of a sworn complaint, the informal hearing stage of a sworn complaint, and the formal hearing stage of a sworn complaint.

The new sections set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

### Subchapter D. Informal Hearing

- 1 TAC §§12.101, 12.103, 12.105

The Texas Ethics Commission adopts new §§12.101, 12.103, and 12.105, concerning the procedures used in the processing of sworn complaints by the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7010).

The new sections describe the general provisions and procedures under which sworn complaints will be filed and processed, describe the procedures in the filing and initial processing of a sworn complaint; and provide guidelines in the investigation and preliminary review of a sworn complaint, the informal hearing stage of a sworn complaint, and the formal hearing stage of a sworn complaint.

The new sections set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993.

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For further information, please call: (512)  
463-5800◆ ◆ ◆  
**Subchapter E. Formal Hearing**

- 1 TAC §§12.111, 12.113, 12.115, 12.117, 12.119, 12.121, 12.123

The Texas Ethics Commission adopts new §§12.111, 12.113, 12.115, 12.117, 12.119, 12.121, and 12.123, concerning the procedures used in the processing of sworn complaints by the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7011).

The new sections generally describe the general provisions and procedures under which sworn complaints will be filed and processed; they describe the procedures in the filing and initial processing of a sworn complaint; and provide guidelines in the investigation and preliminary review of a sworn complaint, the informal hearing stage of a sworn complaint, and the formal hearing stage of a sworn complaint.

The new sections set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993

TRD-9333520 Jim Mathieson  
Assistant General Counsel  
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For further information, please call: (512)  
463-5800**Chapter 18. General Rules  
Concerning Reports****Subchapter A. Forms and Reports**

- 1 TAC §§18.1, 18.3, 18.5, 18.7, 18.9, 18.11, 18.13, 18.15, 18.17, 18.19, 18.21, 18.23, 18.25

The Texas Ethics Commission adopts new §§18.1, 18.3, 18.5, 18.7, 18.9, 18.11, 18.13, 18.15, 18.17, 18.19, 18.21, 18.23, and 18.25, concerning reports filed with the commission. Section 18.5 is adopted with changes, and §§18.1, 18.3, 18.7, 18.9, 18.11, 18.13, 18.15, 18.17, 18.19, 18.21, 18.23, and 18.25 are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7012). New subsection (e) has been added to §18.5.

The new sections describe the forms used by the commission; the procedures for adopting and revising forms; notices given by the commission to filing authorities concerning proper forms and filing obligations, procedures for substitution or replication of forms; and general guidelines in the preparation, correction, and filing of reports for those persons required to file reports under the laws administered and enforced by the commission. Additionally, they set out the administrative penalties and waiver of fines for a late report.

The new sections set forth basic guidelines and requirements for the orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the laws administered and enforced by the commission.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

*§18.5 Notice.*

(a) When required by reference to this section, a notice may be hand-delivered, with receipt acknowledged, or mailed to the recipient's last known mailing address on file with the commission.

(b) A hand-delivered notice is effective when it is received. Notice that is mailed is effective on the date it is deposited into an official repository of the United States Postal Service, properly addressed, with postage prepaid.

(c) A person entitled to receive notice may waive that right by filing a written waiver with the executive director. That waiver may be withdrawn by written notice received by the executive director no later than five business days before the next day a notice is required under this chapter.

(d) Notice that is mailed is presumed to have been received by the person to whom the notice is addressed on the fifth business day after the notice is effective. A notice mailed by registered or certified mail, return receipt requested, is received on the date the receipt is signed by the recipient.

(e) The executive director may combine two or more notices required or permitted to be given under this chapter.

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-9333519 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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For further information, please call: (512)  
463-5800◆ ◆ ◆  
**Subchapter B. Corrected Reports**

- 1 TAC §§18.41, 18.43, 18.45, 18.47, 18.49

The Texas Ethics Commission adopts new §§18.41, 18.43, 18.45, 18.47, and 18.49, concerning reports filed with the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7014).

The new sections describe the forms used by the commission; the procedures for adopting and revising forms; notices given by the commission to filing authorities concerning proper forms and filing obligations; procedures for substitution or replication of forms; and general guidelines in the preparation, correction, and filing of reports for those persons required to file reports under the laws administered and enforced by the commission. Additionally, they set out the administrative penalties and waiver of fines for a late report.

The new sections will set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission and other filing authorities under the laws administered and enforced by the commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.



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

### Subchapter C. Late Reports

- 1 TAC §§18.61, 18.63, 18.65, 18.67, 18.69

The Texas Ethics Commission adopts new §§18.61, 18.63, 18.65, 18.67, and 18.69, concerning reports filed with the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7015).

The new sections describe the forms used by the commission; the procedures for adopting and revising forms; notices given by the commission to filing authorities concerning proper forms and filing obligations; procedures for substitution or replication of forms; and general guidelines in the preparation, correction, and filing of reports for those persons required to file reports under the laws administered and enforced by the commission. Additionally, they set out the administrative penalties and waiver of fines for a late report.

The new sections will set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission and other filing authorities under the laws administered and enforced by the commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

### Subchapter D. Administrative Penalties

- 1 TAC §§18.81, 18.83, 18.85, 18.87, 18.89, 18.91, 18.93, 18.95, 18.97

The Texas Ethics Commission adopts new §§18.81, 18.83, 18.85, 18.87, 18.89, 18.91, 18.93, 18.95, and 18.97, concerning reports filed with the commission. Section 18.83 and §18.95 are adopted with changes, and §§18.81, 18.83, 18.85, 18.87, 18.89, 18.91, 18.93, 18.95, and 18.97, are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register*, (18 TexReg 7016). New paragraph (4) has been added to subsection (a) of §18.83, and non-substantive changes were made to paragraphs (2) and (3). The word "correction" has been changed to "corrected" in §18.95(b).

The new sections describe the forms used by the commission; the procedures for adopting and revising forms; notices given by the commission to filing authorities concerning proper forms and filing obligations; procedures for substitution or replication of forms; and general guidelines in the preparation, correction, and filing of reports for those persons required to file reports under the laws administered and enforced by the commission. Additionally, they set out the administrative penalties and waiver of fines for a late report.

The new sections set forth basic guidelines and requirements for the orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the laws administered and enforced by the commission.

No public comments were received regarding adoption of the new rules.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

*§18.83. No Fine for Certain Corrected Reports.*

(a) Both the corrected report and the original report shall be deemed to have been timely filed, and no fine is assessed against a filer who files a corrected report:

(1) under §18.43 of this title (relating to Voluntary Correction of Reporting Error) to correct a reporting error that is not material;

(2) under §18.43 of this title (relating to Voluntary Correction of Reporting Error) to correct a reporting error that is material, if the corrected report is accompa-

nied by the filer's sworn affidavit under §18.49 of this title (relating to Good Faith Affidavit);

(3) under §18.45 of this title (relating to Required Correction of a Reporting Error) to correct a reporting error that is not material, if the corrected report is filed no later than ten business days after the filer receives notice of that error under §18.47 of this title (relating to Notice of Reporting Error); or

(4) under §18.45 of this title (relating to Required Correction of a Reporting Error) to correct a reporting error that is material, if the corrected report is filed no later than ten business days after the filer receives notice of that error under §18.47 of this title (relating to Notice of Reporting Error) and the corrected report is accompanied by the filer's sworn affidavit under §18.49 of this title (relating to Good Faith Affidavit).

(b) A corrected report other than one described under subsection (a) of this section shall be treated as a late report for all purposes, including the assessment of a fine.

(c) Notwithstanding any language in this title to the contrary, a person who files a late report that was required to be filed eight days before an election, or a report that corrects a material error on such a report, shall be fined in accordance with §18.87 of this title (relating to Additional Fine for Title 15 Reports Filed Eight Days Before an Election).

*§18.95. No Fine by a Local Filing Authority.*

(a) A local filing authority has no power to assess a fine against a filer under this title.

(b) Notwithstanding subsection (a) of this section, the commission may assess a fine against a filer who files a report with a local filing authority under the sworn complaint procedures established by Chapter 12 of this title (relating to Sworn Complaints). The commission may consider the fine amounts established by this title for a late report in determining the amount of a fine to be assessed in a sworn complaint. In mitigation of that fine, the commission may also consider if and when a filer has filed a corrected report with a local filing authority.

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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For further information, please call: (512)  
463-5800◆ ◆ ◆  
**Subchapter E. Waiver of Fine**◆ ◆ ◆  
• 1 TAC §§18.111, 18.113, 18.115

The Texas Ethics Commission adopts new §§18.111, 18.113, and 18.115, concerning reports filed with the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7017).

The new sections describe the forms used by the commission; the procedures for adopting and revising forms; notices given by the commission to filing authorities concerning proper forms and filing obligations; procedures for substitution or replication of forms; and general guidelines in the preparation, correction, and filing of reports for those persons required to file reports under the laws administered and enforced by the commission. Additionally, they set out the administrative penalties and waiver of fines for a late report.

The new sections will set forth basic guidelines and requirements for the orderly processing and administration of sworn complaints filed with the Texas Ethics Commission and other filing authorities under the laws administered and enforced by the commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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For further information, please call (512)  
463-5800**Chapter 20. Campaign  
Financing****Subchapter A. Contribution  
and Expenditure Reports****Penalty for Late Filing**◆ ◆ ◆  
• 1 TAC §20.1

The Texas Ethics Commission adopts the repeal of §20.1, concerning the penalty for late filing of campaign contribution and expenditure reports. The repeal is adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7018).

The repealed section is being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning the filing of reports mandated by any statute administered or enforced by the commission.

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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463-5800◆ ◆ ◆  
**Chapter 20. Reporting Political  
Contributions and  
Expenditures****Subchapter A. General Rules**◆ ◆ ◆  
• 1 TAC §§20.1, 20.3, 20.5, 20.7,  
20.9, 20.11, 20.13, 20.15, 20.17,  
20.19, 20.21, 20.23, 20.25

The Texas Ethics Commission adopts new §§20.1, 20.3, 20.5, 20.7, 20.9, 20.11, 20.13, 20.15, 20.17, 20.19, 20.21, 20.23, and 20.25, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. Sections 20.1, 20.13, and 20.19 are adopted with changes, and §§20.3, 20.5, 20.7, 20.9, 20.11, 20.15, 20.17, 20.21, 20.23, and 20.25, are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7019). The changes to §20.1 are non-substantive in nature, a sentence has been added to

§§20.13(c)(1) and §20.19; and a new subsection (e) has been added to §20.13.

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new rules.

The new sections are adopted under Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

*§20.1. Definitions.* The following words and terms, when used in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), Chapter 24 of this title (relating to Restrictions On Contributions And Expenditures Applicable to Corporations and Labor Organizations), and Chapter 26 of this title (relating to Political and Legislative Advertising), shall have the following meanings, unless the context clearly indicates otherwise.

**Campaign communication**—A written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.

**Campaign contribution**—A contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.

**Campaign expenditure**—An expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.

**Campaign treasurer**—Either the individual appointed by a candidate to be the campaign treasurer, or the individual responsible for filing campaign finance reports of a political committee under Texas law or the law of any other state.

**Candidate**—A person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:

(A) the filing of a campaign treasurer appointment;

(B) the filing of an application for a place on the ballot;

(C) the filing of an application for nomination by convention;

(D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;

(E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;

(F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;

(G) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure; or

(H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.

**Contribution**—A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subsection, and a guarantee of a loan or extension of credit, including a loan described by this subsection. The term includes an in-kind contribution. The term does not include:

(A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made;

(B) an expenditure required to be reported under the Government Code, Chapter 305; or

(C) a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor.

**Corporation**—A corporation that is organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, federal law, or law of another state or nation. The term also includes the following associations, whether incorporated or not: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies. The term does not include professional corporations or professional associations.

**Direct campaign expenditure**—A campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if:

(A) it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or

(B) it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure.

**Election cycle**—A single election and any related primary or runoff election.

**Expenditure**—A payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.

**General-purpose committee**—A political committee that has among its principal purposes:

(A) supporting or opposing:

(i) two or more candidates who are unidentified or are seeking offices that are unknown; or

(ii) one or more measures that are unidentified, or

(B) assisting two or more officeholders who are unidentified.

**Identified Measure**—A question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

**In-Kind Contribution**—A contribution of goods, services, or any other thing of

value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure.

**Labor organization**—An agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

**Non-political expenditure**—An expenditure from political contributions that is not an officeholder expenditure or a campaign expenditure.

**Officeholder contribution**—A contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

(A) the officeholder incurs in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money. Officeholder expenditure—An expenditure made by any person to defray expenses that:

(A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

**Opposed candidate**—A candidate who has an opponent whose name is to appear on the ballot. The name of a write-in candidate does not appear on the ballot.

**Out-of-state political committee**—A political committee that makes political expenditures outside Texas and in the 12 months immediately preceding the making of a political expenditure by the committee inside Texas (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80% or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. Section 20.13 of this title (relating to Out-of-State Committees) explains the practical application of this definition.

**Pledge**—A contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The term does not include a contribution actually made in the form of a check.

**Political advertising**—A communication that supports or opposes a political party, a public officer, a measure, or a

candidate for nomination or election to a public office or office of a political party, and:

(A) is published in a newspaper, magazine, or other periodical in return for consideration;

(B) is broadcast by radio or television in return for consideration; or

(C) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

**Political committee**—Two or more persons that have as a principal purpose accepting political contributions or making political expenditures to support or oppose candidates, officeholders, or measures.

**Political contribution**—A campaign contribution or an officeholder contribution.

**Political expenditure**—A campaign expenditure or an officeholder expenditure.

**Political subdivision**—A county, city, or school district or any other governmental entity that:

(A) embraces a geographic area with a defined boundary;

(B) exists for the purpose of discharging functions of government; and

(C) possesses authority for subordinate self-government through officers selected by it.

**Report**—Any document required to be filed by this title, including an appointment of campaign treasurer, any type of report of contributions and expenditures, and any notice.

**Reportable activity**—A political contribution, political expenditure, or other activity required to be reported under this title.

**Specific-purpose committee**—A political committee that does not meet the definition of general-purpose committee and that has among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified;

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

**Telegram report**—A shorthand term for a report filed in accordance with the requirements of §§20.221, 20.333, or 20.435 of this title (relating to Telegram Report by Certain Candidates; Telegram Report by Certain Specific-Purpose Committees; Telegram Reports by Certain General-Purpose Committees). The report may be filed by telegram, telephonic facsimile machine, or by hand.

**Unidentified Measure**—A question or proposal that is intended to be submitted in an election for an expression of the voters' will and that is not yet legally required to be submitted in an election, except that the term does not include the circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. The circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will is considered to be an identified measure.

#### §20.13. Out-of-State Committees

(a) An out-of-state political committee is not required to file reports under this title.

(b) An out-of-state political committee that files an appointment of campaign treasurer with a Texas filing authority is required to file reports under this title.

(c) A political committee must determine if it is an "out-of-state political committee" (and therefore not required to file reports under this title) each time the political committee plans to make a political expenditure in Texas (other than an expenditure in connection with a campaign for a federal office or an expenditure for a federal officeholder). The determination is made as follows:

(1) Before making the expenditure (other than an expenditure in connection with a campaign for a federal office or an expenditure for a federal officeholder), the committee must calculate its total political expenditures made during the 12 months immediately preceding the date of the planned expenditure. This total does not include the planned political expenditure triggering the calculation requirement.

(2) If 80% or more of the total political expenditures are in connection with elections not voted on in Texas, the committee is an out-of-state committee and may make the anticipated expenditure without complying with the reporting requirements set out in this title, regardless of the amount of the anticipated expenditure.

(3) If less than 80% of the total political expenditures are in connection with elections not voted on in Texas, the com-

mittee is no longer an out-of-state committee and may not make the anticipated expenditure without complying with the requirements of this title applicable to political committees generally.

(d) Section 22.7 of this title (relating to Contribution from Out-of-State Committee) contains other provisions regarding requirements applicable to recipients of contributions from out-of-state political committees.

(e) An out-of-state political committee planning an expenditure in connection with a campaign for federal office voted on in Texas is not required to make the determination required under subsection (c) of this section. However, an expenditure in connection with a campaign for federal office voted on in Texas must be included in the calculation set out in subsection (c) of this section for an out-of-state committee making an expenditure in connection with a non-federal campaign voted on in Texas.

**§20.19. Reports Must Be Filed On Official Forms.** Except for telegram reports, all reports required by Chapters 20-38 must be filed on forms prescribed by the commission pursuant to §18.1 of this title (relating to Adoption and Revision of Forms) or on forms approved by the executive director pursuant to §18.11 of this title (relating to Substitution or Replication of 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.

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Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

#### Subchapter C. Rules Concerning Reports

- 1 TAC §§20.27, 20.29, 20.31, 20.33, 20.35, 20.111, 20.113, 20.115, 20.117, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20.137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, 20.161

The Texas Ethics Commission adopts the repeal of §§20.27, 20.29, 20.31, 20.33, 20.35, 20.111, 20.113, 20.115, 20.117, 20.119, 20.121, 20.123, 20.125, 20.127, 20.131, 20.133, 20.135, 20.137, 20.139, 20.151, 20.153, 20.155, 20.157, 20.159, and 20.161, concerning the rules for filing campaign dis-

closure reports. The repealed sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7022).

The repealed sections are being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning the filing of reports mandated by any statute administered or enforced by the commission.

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-9333550 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

## ◆ ◆ ◆ Subchapter B. General Reporting Rules

- 1 TAC §§20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, 20.67

The Texas Ethics Commission adopts new §§20.51, 20.53, 20.55, 20.57, 20.59, 20.61, 20.63, 20.65, and 20.67, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. Sections 20.53, 20.57, 20.65, and 20.67 are adopted with changes; §§20.51, 20.55, 20.59, 20.61, and 20.63 are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7023). The words "or expenditure" are added to the last sentence of §20.53; and the word "telephone" has been substituted for "phone" in §20.57. The changes to §20.65 and §20.67 are non-substantive in nature.

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political commit-

tees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

*§20.53. Disclosure of True Source of Contribution or Expenditure.* A person may not knowingly make or authorize a political contribution or political expenditure in the name of or on behalf of another unless the person discloses the name and address of the person who is the true source of the contribution or expenditure.

### *§20.57. Time of Making Expenditure*

(a) The date of a political expenditure is the date the amount is readily determinable by the person making the expenditure, except as provided by subsection (b) of this section.

(b) If under normal business practices, the amount of an expenditure is not known or readily ascertainable until receipt of a periodic bill, the date of the expenditure is the date the bill is received. Examples of expenditures to which this subsection is applicable are expenditures for use of electricity or for long-distance telephone calls.

(c) A political expenditure by credit card must be included in the report for the period during which the charge was made, not in the report for the period during which the statement from the credit card company was received.

### *§20.65. Reporting No Activity*

(a) As a general rule, a candidate or officeholder must file a report required by Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File) even if there has been no reportable activity during the period covered by the report.

(b) This general rule does not apply to:

- (1) telegram reports,

- (2) special session reports; or

- (3) a local officeholder who does not have a campaign treasurer appointment on file and who does not accept more than \$500 in political contributions or make more than \$500 in political expenditures during the reporting period.

(c) If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only those pages of the report necessary to identify the filer and to swear to the lack of reportable activity.

### *§20.67. Reporting After the Death or Incapacity of a Filer.*

(a) The responsibility to file reports required by this title survives the death or incapacity of a candidate or officeholder.

(b) The legal representative or the estate of a candidate or officeholder who has died, or the legal representative of a candidate who is incapacitated, shall file any reports due under Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) or Subchapter D of this chapter (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File).

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 18, 1993

TRD-9333557 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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## ◆ ◆ ◆ Subchapter C. Reporting Requirements for a Candidate

- 1 TAC §§20.201, 20.203, 20.205, 20.207, 20.209, 20.211, 20.213, 20.215, 20.217, 20.219, 20.221, 20.223, 20.225, 20.227, 20.229, 20.231, 20.233, 20.235, 20.237, 20.239, 20.241, 20.243

The Texas Ethics Commission adopts new §§20.201, 20.203, 20.205, 20.207, 20.209, 20.211, 20.213, 20.215, 20.217, 20.219, 20.221, 20.223, 20.225, 20.227, 20.229, 20.231, 20.233, 20.235, 20.237, 20.239, 20.241, and 20.243, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These sections are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7025). The changes are primarily non-substantive in nature.

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

*§20.201. Required Appointment of Campaign Treasurer.* A candidate must file a campaign treasurer appointment before accepting any campaign contributions or making or authorizing any campaign expenditures, including campaign expenditures from personal funds.

*§20.203. Candidates for State Party Chair.* Because the state chair of a political party does not hold a public office, a candidate for state chair of a political party is not within the definition of "candidate" set out in §20.1(4) of this title (relating to Definitions). Nonetheless, a candidate for the state chair of a political party is subject to filing requirements as provided by Subchapter J of this chapter (relating to Reports by a Candidate for State Party Chair).

*§20.205. Contents of Candidate's Campaign Treasurer Appointment.* Each candidate's campaign treasurer appointment shall include the following information.

- (1) the name of the candidate making the appointment;
- (2) the mailing address of the candidate making the appointment;
- (3) the office sought by the candidate making the appointment, if known;
- (4) the office held by the candidate, if any;

(5) the name of the individual appointed campaign treasurer;

(6) the campaign treasurer's residence or business street address;

(7) the campaign treasurer's telephone number;

(8) a statement acknowledging awareness of Government Code, Chapter 573, Subchapter C (relating to Nepotism Prohibitions); and

(9) the signature of the candidate making the appointment.

*§20.207. Termination of Campaign Treasurer Appointment.*

(a) A candidate may terminate a campaign treasurer appointment by:

(1) filing a campaign treasurer appointment for a successor campaign treasurer; or

(2) filing a final report.

(b) A person may terminate his or her own status as campaign treasurer by immediately notifying both the appointing authority and the filing authority in writing.

(c) If a person terminates his or her own status as campaign treasurer, the termination is effective on the date the candidate receives the notice or on the date the filing authority actually receives the notice, whichever is later.

(d) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to subsection (c) of this section.

*§20.209. Reporting Obligations Imposed on Candidate, Not Campaign Treasurer.* A candidate, not the candidate's campaign treasurer, is responsible for complying with this title

*§20.211. Semiannual Reports.*

(a) A candidate shall file semiannual reports as provided by this section.

(b) One semiannual report is due no earlier than July 1 and no later than July 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) January 1;

(B) the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this title (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File); or

(C) the day the candidate's campaign treasurer appointment was filed, if this is the candidate's first report filed under this subchapter (other than a telegram report or a special session report) or Subchapter D of this title.

(2) The period covered by a report under this subsection ends on June 30.

(c) One semiannual report is due no earlier than January 1 and no later than January 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) July 1;

(B) the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this chapter; or

(C) the day the candidate's campaign treasurer appointment was filed, if this is the candidate's first report filed under this subchapter (other than a telegram report or a special session report) or Subchapter D of this chapter.

(2) The period covered by a report under this subsection continues through December 31.

*§20.213. Pre-election Reports.*

(a) A candidate who has an opponent on the ballot in an election must file two pre-election reports, except as provided by subsections (b), (e), and (f) of this section.

(b) A candidate who has declared the intention to file reports in accordance with §20.217 of this title (relating to Modified Reporting) and who remains eligible to file under the modified schedule is not required to file pre-election reports.

(c) The first pre-election report is due not later than 30 days before election day. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise the period begins on the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this title (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the 40th day before the election.

(d) The second pre-election report is due not later than 8 days before election day. The report covers the period that begins on the 39th day before the election and ends on the 10th day before the election.

(e) If a person becomes an opposed candidate during the period that begins on the 39th day before the election and ends on the 10th day before the election, the person shall file one pre-election report. The report shall cover a period that begins on the day the candidate's campaign treasurer appointment was filed, if this is the candidate's first report filed, or on the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this title. The period covered by the report ends on the 10th day before the election.

(f) If a person becomes an opposed candidate after the 10th day before the election, the person is not required to file pre-election reports. The person is required to file any telegram reports required by §20.221 of this title (relating to Telegram Report by Certain Candidates).

#### §20.215. Runoff Report.

(a) A candidate in a runoff election shall file a runoff report, except as provided by subsection (b) of this section.

(b) A candidate who has declared an intention to file reports in accordance with §20.217 of this title (relating to Modified Reporting) and who remains eligible to file under the modified schedule is not required to file a runoff report.

(c) A runoff report is due no later than the 8th day before the runoff election.

(d) A runoff report covers the period that begins on the 9th day before the date of the main election and ends on the 10th day before the runoff.

#### §20.217. Modified Reporting

(a) An opposed candidate who does not intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with any election in an election cycle may choose to file under the modified schedule.

(b) Under the modified schedule, an opposed candidate is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a candidate must file a declaration of intent not to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the candidate

understands that if either one of those limits is exceeded, the candidate will be required to file pre-election reports and, if necessary, a runoff report.

(d) A declaration under subsection (c) of this section is filed with the candidate's campaign treasurer appointment.

(e) To file under the modified schedule, a candidate must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) If an opposed candidate exceeds either of the \$500 limits, the candidate must file reports under §20.213 of this title (relating to Pre-election Reports) and §20.215 of this title (relating to Runoff Report).

(g) If an opposed candidate exceeds either of the \$500 limits after the 30th day before the election, the candidate must file a report not later than 48 hours after exceeding the limit. If this is the candidate's first report filed, the report covers a period that begins on the day the candidate's campaign treasurer appointment was filed. Otherwise the period begins on the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report) or Subchapter D of this title (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File). The period covered by the report continues through the day the candidate exceeded one of the limits for modified reporting.

§20.219. *Content of Candidate's Sworn Report of Contributions and Expenditures.* Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

- (1) the candidate's full name;
- (2) the candidate's address;
- (3) the office sought by the candidate, if known;
- (4) the identity and date of the election for which the report is filed, if known;
- (5) the campaign treasurer's name;
- (6) the campaign treasurer's telephone number;
- (7) the campaign treasurer's residence or business street address;
- (8) for each political committee from which the candidate received notice under §20.319 of this title (relating to

Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):

(A) the committee's full name;

(B) the committee's address,

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

(9) for each individual making a reportable direct campaign expenditure from whom the candidate received notice under §22.5 of this title (relating to Direct Campaign Expenditures)

(A) the full name of the individual, and

(B) the address of the individual;

(10) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business

(A) the full name of the business to which the expenditure was made,

(B) the address of the person to whom the expenditure was made,

(C) the date of the expenditure,

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(11) for each person from whom the candidate accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than \$50 in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than \$50 in value:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(12) for each person from whom the candidate accepted a pledge or pledges to provide more than \$50 in money or goods or services worth more than \$50:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged; and

(F) the total of all pledges accepted during the period for \$50 and less from a person, except those reported under subparagraphs (A)-(E) of this paragraph.

(13) for each person making a loan or loans to the candidate for campaign purposes if the total amount loaned by the person during the period is more than \$50:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(14) the total amount of loans accepted during the period for \$50 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for a loan reported under paragraph (13) of this subsection;

(15) for political expenditures made during the reporting period that total more than \$50 to a single payee, other than expenditures reported under paragraph (10) of this subsection:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure; and

(E) the amount of the expenditure;

(16) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

(A) the full name of the person to whom each expenditure was made,

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure;

(E) a declaration that the expenditure was made out of personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

(17) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (10) of this section:

(A) the date of each payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made,

(D) the nature of the goods or services for which the payment was made; and

(E) the amount of the payment;

(18) for each other candidate or officeholder who benefits from a direct campaign expenditure made by the candidate during the reporting period:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder.

(19) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee),

(20) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period,

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less,

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans),

(D) the total amount or an itemized listing of the political expenditures of \$50 and less; and



(E) the total amount of all political expenditures;

(21) if applicable, a statement that no reportable activity occurred during the reporting period; and

(22) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

#### §20.221. Telegram Report by Certain Candidates.

(a) As provided by subsection (b) of this section, certain candidates must file reports about certain contributions accepted during the period that begins on the 9th day before an election and ends at noon on the 2nd day before an election. Reports under this section are known as "telegram" reports, although they may be filed by hand or by telephonic facsimile machine as well as by telegram.

(b) The following candidates must file telegram reports:

(1) an opposed candidate for state senator who, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,000; and

(2) an opposed candidate for state representative who, during the period described in subsection (a) of this section, accepts political contributions from a person that in the aggregate exceed \$200.

(c) A candidate must file a telegram report no later than 48 hours after the candidate accepts a contribution from a person that triggers the requirement to file the telegram report.

(d) The report filed under subsection (c) of this section may be delivered by hand, by telegram, or by telephonic facsimile machine. Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to this section.

(e) If, during the reporting period for telegram contributions, a candidate receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a telegram report during that period, the candidate must file an additional telegram report for each such contribution. Each such telegram report is due no later than 48 hours after the candidate accepts the contribution.

(f) A candidate must file telegram reports for each person whose contribution or contributions made during the period for

telegram reports exceed the threshold for telegram reports.

(g) A candidate must also report contributions reported on a telegram report on the next semiannual, pre-election, or runoff report filed, as applicable.

#### §20.223. Form and Contents of Telegram Report.

(a) A telegram report shall be filed by telegram or telephonic facsimile machine or by hand. The report is not required to be on a form prescribed by the commission.

(b) A telegram report shall include the following information:

- (1) the name of the candidate;
- (2) the office sought by the candidate;
- (3) the name of the person making a contribution or contributions that triggered the requirement to file a telegram report;
- (4) the address of the person making the contribution or contributions;
- (5) the amount of each contribution;
- (6) the date each contribution was accepted; and
- (7) a description of any in-kind contribution.

#### §20.225. Special Session Reports.

(a) A candidate for a statewide office or for the legislature who accepts a political contribution during the period that begins on the date the governor signs a proclamation calling a special legislative session and ends on the date of final adjournment must file a special session report.

(b) A special session report must be filed with the commission no later than the 30th day after the date of final adjournment of the special session.

(c) A special session report is a report of contributions only, not expenditures. Expenditures made during the period covered by a special session report are required to be reported in the next applicable sworn report of contributions and expenditures.

(d) Contributions reported in a special session report are not to be reported in any other report.

(e) A determination to accept or refuse a political contribution received during the period covered by a special session report shall be made no later than the 3rd day after the date the contribution is received.

(f) A contribution that is refused under subsection (e) of this section must be returned no later than the 30th day after the

date of final adjournment. A contribution not returned by that date will be deemed accepted.

(g) A candidate is not required to file a separate special session report if another report is due no later than the 10th day after the date a report required under this section would be due.

#### §20.227. Contents of Special Session Report. A special session report shall include the following information:

- (1) the candidate's name;
- (2) the candidate's address;
- (3) the office sought by the candidate;
- (4) the date each contribution was accepted;
- (5) the full name of each person making a contribution;
- (6) the address of each person making a contribution;
- (7) the amount of each contribution accepted during the period;
- (8) a description of any in-kind contribution accepted during the period; and
- (9) an affidavit, executed by the candidate, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

#### §20.229. Final Report.

(a) A candidate who expects no further reportable activity in connection with his or her candidacy may file a final report at any time.

(b) The term "reportable activity" includes an expenditure to pay a campaign debt.

(c) Filing a final report terminates the candidate's campaign treasurer appointment and relieves the candidate of the responsibility for filing reports, except as provided by subsection (e) of this section.

(d) A former candidate may not accept campaign contributions or make campaign expenditures without a campaign treasurer appointment on file.

(e) A candidate who is not an officeholder when he or she files a final report under this section, and who retains unexpended political contributions, unexpended interest or other income from political contributions, assets purchased with political contributions or interest, or other income from political contributions is subject to the requirements of §§20.233-20.243 of this title.

(f) A candidate who is an officeholder when he or she files a final report under this section becomes subject to the reporting requirements set out in Subchapter D of this title (relating to Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File).

**§20.231. Contents of Final Report.** A final report must contain the following:

(1) the information listed in §20.219 of this title (relating to Content of Candidate's Sworn Report of Contributions and Expenditures);

(2) the following statement, signed by the candidate: "I do not expect any further political contributions or political expenditures in connection with my candidacy. I understand that designating a report as a final report terminates my campaign treasurer appointment. I also understand that I may not accept any campaign contributions or make any campaign expenditures without a campaign treasurer appointment on file.";

(3) if the candidate is not an officeholder, a statement that the candidate does or does not have unexpended contributions or unexpended interest or other income earned from political contributions;

(4) if the candidate is not an officeholder and has unexpended contributions or unexpended interest or income earned from political contributions, the following statement signed by the candidate: "I understand that I may not convert unexpended political contributions or unexpended interest or other income earned from political contributions to personal use. I also understand that I must file an annual report of unexpended contributions and that I may not retain unexpended contributions or unexpended interest or other income earned from political contributions longer than six years after filing this final report. Further, I understand that I must dispose of unexpended political contributions and unexpended interest or other income earned from political contributions in accordance with the requirements of Election Code, §254.204 (relating to Disposition of Unexpended Contributions).";

(5) if the candidate is not an officeholder, a statement that the candidate does or does not retain assets purchased with political contributions or interest or other income earned from political contributions;

(6) if the candidate is not an officeholder and retains assets purchased with political contributions or interest or other income from political contributions, the following statement signed by the candidate: "I understand that I may not convert assets

purchased with political contributions or interest or other income earned from political contributions to personal use. I also understand that I must file an annual report of unexpended contributions and that I may not retain assets purchased with political contributions or interest or other income earned from political contributions longer than six years after filing this final report. I also understand that I must dispose of assets purchased with political contributions or interest or other income earned from political contributions in accordance with the requirements of Election Code, §254.204 (relating to Disposition of Unexpended Contributions)."; and

(7) if the candidate is an officeholder, a statement that the officeholder is aware that he or she remains subject to filing requirements applicable to an officeholder who does not have a campaign treasurer appointment on file.

**§20.233. Annual Report of Unexpended Contributions.**

(a) A candidate who files a final report and is not an officeholder when he or she files a final report under §20.229 of this title (relating to Final Report) must file an annual report for each year that the former candidate retains unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions.

(b) The report is due not earlier than January 1 and not later than January 15 of the year after a year in which the former candidate retained unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions.

(c) The report is filed with the authority with whom the former candidate's campaign treasurer appointment was required to be filed.

(d) The requirement to file annual reports ends after:

(1) all unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions have been disbursed and reported on an annual report, or

(2) the former candidate has complied with §20.237 of this title (relating to Disposition of Unexpended Contributions) and §20.239 of this title (relating to Report of Final Disposition of Unexpended Contributions).

**§20.235. Contents of Annual Report.** An annual report of unexpended contributions shall include the following information:

(1) the candidate's full name;

(2) the candidate's address;

(3) for each payment made by the candidate from unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions during the previous year:

(A) the full name of each person to whom a payment was made;

(B) the address of each person to whom a payment was made;

(C) the date of each payment;

(D) the nature of the goods or services for which the payment was made; and

(E) the amount of each payment;

(4) the total amount of unexpended political contributions as of December 31 of the previous year;

(5) the total amount of interest and other income earned on unexpended political contributions during the previous year; and

(6) an affidavit, executed by the candidate, stating, "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

**§20.237. Final Disposition of Unexpended Contributions.**

(a) A former candidate who was not an officeholder at the time he or she filed a final report may not retain unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions for more than six years after the date of the final report, except as provided by subsection (f) of this section.

(b) During the six-year period after the final report is filed, a former candidate may disburse unexpended political contributions, unexpended interest or other income earned from political contributions, or as-

sets purchased with political contributions or interest or other income earned from political contributions to one of the following:

(1) the political party with which the person was affiliated when the person's name last appeared on a ballot;

(2) a candidate or political committee, subject to the reporting requirements of §20.243 of this title (relating to Contribution of Unexpended Political Contributions to Candidate or Political Committee),

(3) the comptroller of public accounts, for deposit in the state treasury for use in financing primary elections;

(4) one or more persons from whom political contributions were received, with contributions to a person not to exceed the aggregate amount the former candidate accepted from that person during the last two years that the candidate accepted political contributions;

(5) a recognized, tax-exempt charitable organization; or

(6) a public or private post-secondary educational institution or an institution of higher education, as defined by Education Code, §61.003(8) (relating to Definitions), solely for the purpose of assisting or creating a scholarship program.

(c) A former candidate may not convert unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions to personal use

(d) At the end of the six-year period after the final report is filed, a former candidate must dispose of unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions in one of the ways listed in subsection (b) of this section

(e) A former candidate must make the disposition required by subsection (d) of this section by the tenth day after the end of the six-year period.

(f) The six-year period prescribed by subsection (a) of this section ceases to run if the former candidate files a new campaign treasurer appointment during the period.

*§20.239. Report of Final Disposition of Unexpended Contributions.*

(a) A person required by §20.237 of this title (relating to Final Disposition of Unexpended Contributions) to dispose of unexpended contributions, unexpended in-

terest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions at the end of the period for retaining such funds is required to file a report of the disposition of such funds.

(b) The report must be filed no later than the 30th day after the end of the six-year period prescribed by §20.237(a) of this title (relating to Final Disposition of Unexpended Contributions).

(c) The report shall be filed with the authority with whom the person's campaign treasurer appointment was required to be filed

(d) The report shall cover the period that begins on the first day after the period covered by the last annual report required through the day a report under this section is filed.

*§20.241. Contents of Report of Final Disposition of Unexpended Contributions.* A report of final disposition of unexpended contributions shall include the following information.

(1) the candidate's full name,

(2) the candidate's address,

(3) the full name of each person to whom a payment from unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions was made,

(4) the address of each person to whom such a payment was made,

(5) the date of each payment,

(6) the nature of the goods or services for which the payment was made,

(7) the amount of each payment, and

(8) an affidavit, executed by the candidate, stating "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code"

*§20.243 Contribution of Unexpended Political Contributions to Candidate or Political Committee.*

(a) A former candidate who has filed a final report and who contributes unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions to a candidate or political committee must report the contribution on an annual

report of unexpended contributions or on a report of final disposition of unexpended contributions, as applicable. The former candidate must also report the contribution under subsection (b) of this section

(b) A former candidate who has filed a final report and who contributes unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions to a candidate or political committee must report each contribution to the filing authority with whom the candidate or political committee receiving the contribution files reports. The contribution must be reported on the form used for reports of contributions and expenditures by specific-purpose committees. The report should be filed by the due date for the report in which the candidate or political committee receiving the contribution must report the receipt of the contribution.

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 18, 1993

TRD-9333556

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date December 31, 1993

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

◆ ◆ ◆  
Subchapter D. Reporting Requirements for an Officeholder Who Does Not Have a Campaign Treasurer Appointment on File

- 1 TAC §§20.271, 20.273, 20.275, 20.277, 20.279, 20.281, 20.283, 20.285, 20.287, 20.289, 20.291, 20.293, 20.295

The Texas Ethics Commission adopts new §§20.271, 20.273, 20.275, 20.277, 20.279, 20.281, 20.283, 20.285, 20.287, 20.289, 20.291, 20.293, and 20.295, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. The new sections are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7030). The changes are primarily non-substantive in nature, however, §§20.279, 20.285, 20.287, 20.289, 20.291, 20.293, and 20.295 have been revised with for additional language

The new sections set forth the general rules concerning certain reports filed with the com-

mission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

#### §20.271. *Officeholders Covered.*

(a) The provisions in this subchapter that apply to an officeholder apply only to a person who holds an elective public office in the state and to the secretary of state.

(b) For purposes of this subchapter, a statewide officer-elect or a member-elect of the legislature is considered to be an officeholder beginning on the day after the date of the general or special election at which the officer-elect or member-elect was elected.

(c) An officeholder who has a campaign treasurer appointment on file is a candidate for filing purposes and shall file under Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) rather than under this subchapter.

#### §20.273. *Semiannual Reports of Contributions and Expenditures.*

(a) Except as provided by §20.275 of this title (relating to Exception from Filing Requirement for Certain Local Officeholders), an officeholder shall file semiannual reports of contributions and expenditures as provided by this section.

(b) One semiannual report is due no earlier than July 1 and no later than July 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) January 1;

(B) the first day after the period covered by the last report required by this chapter, whether that report was filed by the officeholder in his or her status as an officeholder or as a candidate; or

(C) the day the officeholder took office, if the report is the first report filed by the officeholder under this chapter.

(2) The period covered by a report under this subsection ends on June 30.

(c) One semiannual report is due no earlier than January 1 and no later than January 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) July 1;

(B) the first day after the period covered by the last report required by this chapter, whether that report was filed by the officeholder in his or her status as an officeholder or as a candidate; or

(C) the day the officeholder took office, if the report is the first report filed by the officeholder under this chapter.

(2) The period covered by a report under this subsection ends on December 31.

§20.275. *Exception from Filing Requirement for Certain Local Officeholders.* An officeholder is not required to file a semiannual report of contributions and expenditures if the officeholder:

(1) is required to file with an authority other than the commission;

(2) does not have a campaign treasurer appointment on file; and

(3) does not accept more than \$500 in political contributions or make more than \$500 in political expenditures during the reporting period.

#### §20.277. *Appointment by Officeholder of Campaign Treasurer.*

(a) An officeholder who appoints a campaign treasurer after a period in which the officeholder did not have a campaign treasurer appointment on file must file a sworn report of contributions and expenditures no later than 15 days after the date the campaign treasurer appointment was filed.

(b) A report required by this section covers a period that begins on the later of the following dates, as applicable:

(1) the first day after the period covered by the last report filed under this

chapter, whether that report was filed by the officeholder in his or her status as an officeholder or as a candidate; or

(2) the day the officeholder took office, if the report is the first report filed by the officeholder under this chapter.

(c) The period covered by a report required by this section ends on the day the campaign treasurer appointment was filed.

(d) After an officeholder files a campaign treasurer appointment, the officeholder is a candidate for filing purposes and shall file under Subchapter C of this chapter (relating to Reporting Requirements for a Candidate) rather than under this subchapter.

§20.279. *Contents of Officeholder's Sworn Report of Contributions and Expenditures.* An officeholder's semiannual report of contributions and expenditures required by this subchapter must cover reportable activity during the reporting period and must include the following information:

(1) the officeholder's full name;

(2) the officeholder's address,

(3) the office held by the officeholder;

(4) for each political committee from which the officeholder received notice under §20.319 of this title (relating to Notice to Candidate or Officeholder) or §20.421 of this title (relating to Notice to Candidate or Officeholder):

(A) the committee's full name;

(B) the committee's address;

(C) identification of the political committee as a general-purpose or a specific-purpose committee;

(D) the full name of the committee's campaign treasurer; and

(E) the address of the committee's campaign treasurer;

(5) on a separate page, the following information for each expenditure from political contributions made to a business in which the officeholder has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business

(A) the full name of the business to which the expenditure was made;

(B) the address of the business to which the expenditure was made;

(C) the date of the expenditure;

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(6) for each person from whom the officeholder accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than \$50 in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than \$50 in value:

(A) the full name of the person making the contribution;

(B) the address of the person making the contribution;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(7) for each person from whom the officeholder accepted a pledge or pledges to provide more than \$50 in money or goods or services worth more than \$50:

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the amount of each pledge;

(D) the date each pledge was accepted; and

(E) a description of any goods or services pledged;

(8) the total of all pledges accepted during the period for \$50 and less from a person, except those reported under paragraph (7) of this section;

(9) for each person making a loan or loans to the officeholder for officeholder purposes, if the total amount loaned

by the person during the period is more than \$50:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor,

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(10) the total amount of loans accepted during the period for \$50 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (9) of this section;

(11) for political expenditures made during the reporting period that total more than \$50 to a single payee, other than expenditures reported under paragraph (5) of this section:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure, for example, the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(12) for each political expenditure of any amount made out of personal funds for which reimbursement from political contributions is intended:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of each expenditure;

(D) the purpose of the expenditure, for example, the nature of the goods or services for which the expenditure was made;

(E) a declaration that the expenditure was made from personal funds;

(F) a declaration that reimbursement from political contributions is intended; and

(G) the amount of the expenditure;

(13) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (5) of this section:

(A) the date of each payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made;

(D) the purpose of the expenditure, for example, the nature of the goods or services for which the payment was made; and

(E) the amount of the payment;

(14) for each candidate or other officeholder who benefits from a direct campaign expenditure made by the officeholder during the reporting period:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(15) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(16) the following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less,

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$50 and less, and

(E) the total amount of all political expenditures;

(17) if applicable, a statement that no reportable activity occurred during the reporting period, and

(18) an affidavit, executed by the officeholder, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

#### *§20.281 Special Session Report by Certain Officeholders.*

(a) A statewide officeholder or member of the legislature who accepts a political contribution during the period that begins on the date the governor signs a proclamation calling a special legislative session and ends on the date of final adjournment must file a special session report.

(b) A special session report is a report of contributions only, not expenditures. Expenditures made during the period covered by a special session report are required to be reported in the next applicable sworn report of contributions and expenditures.

(c) Contributions reported in a special session report are not to be reported in any other report.

(d) A special session report must be filed with the commission no later than the 30th day after the date of final adjournment of the special session.

(e) A determination to accept or refuse a political contribution received during the period covered by a special session re-

port shall be made no later than the third day after the date the contribution is received.

(f) A contribution that is refused under subsection (e) of this section must be returned no later than the 30th day after the date of final adjournment. A contribution not returned by that date will be deemed accepted.

(g) An officeholder is not required to file a separate special session report if another report is due not later than the tenth day after the date a report required under this section would be due.

*§20.283. Contents of Special Session Report.* A report required by §20.281 of this title (relating to Special Session Report by Certain Officeholders) shall include the following information:

(1) the officeholder's name,

(2) the officeholder's address,

(3) the office held,

(4) the date each contribution was accepted,

(5) the name of each person making a contribution;

(6) the address of each person making a contribution,

(7) the amount of each contribution accepted during the period,

(8) a description of any in-kind contribution, and

(9) an affidavit, executed by the officeholder, stating "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

#### *§20.285 Annual Report of Unexpended Contributions by Former Officeholder*

(a) A person who ceases to be an officeholder at a time when he or she does not have a campaign treasurer appointment on file must file an annual report if he or she has unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions after filing the last required report as an officeholder.

(b) A report under this section shall be filed not earlier than January 1 and not later than January 15 of each year following the year in which the former officeholder filed the last required report as an officeholder, unless the requirement to file annual reports has ended as provided by subsection (d) of this section.

(c) The report is filed with the authority with whom the former officeholder's campaign treasurer appointment was required to be filed.

(d) The requirement to file annual reports ends after.

(1) all political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions have been disbursed and reported on an annual report, or

(2) the former officeholder has complied with §20.289 of this title (relating to Disposition of Unexpended Contributions) and §20.291 of this title (relating to Report of Final Disposition of Unexpended Contributions).

#### *§20.287 Contents of Annual Report.*

(a) An annual report of unexpended contributions shall include the following information.

(1) the officeholder's full name,

(2) the officeholder's address;

(3) for each payment made by the officeholder from unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions during the previous year.

(A) the full name of each person to whom a payment was made,

(B) the address of each person to whom a payment was made,

(C) the date of each payment,

(D) the nature of the goods or services for which the payment was made, and

(E) the amount of the payment,

(4) the total amount of unexpended political contributions as of December 31 of the previous year,

(5) the total amount of interest and other income earned on unexpended political contributions during the previous year, and

(6) an affidavit, executed by the former officeholder, stating "I swear, or affirm, that the accompanying report is true and correct and includes all information

required to be reported by me under Title 15, Election Code."

#### *§20.289. Disposition of Unexpended Contributions.*

(a) A former officeholder who did not have a campaign treasurer appointment on file at the time he or she ceased to be an officeholder may not retain unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions for more than six years after the date he or she ceased to be an officeholder, except as provided by subsection (f) of this section.

(b) During the six-year period after the date a former officeholder ceased to be an officeholder, the former officeholder covered by subsection (a) of this section may disburse unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions for a purpose listed in §20.237 of this title (relating to Final Disposition of Unexpended Contributions).

(c) A former officeholder may not convert political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions to personal use.

(d) At the end of the six-year period, a former officeholder covered by subsection (a) of this section must dispose of unexpended political contributions, unexpended interest or other income earned from political contributions, and assets purchased with political contributions or interest or other income earned from political contributions in one of the ways listed in §20.237 of this title (relating to Final Disposition of Unexpended Contributions).

(e) A former officeholder must make the disposition required by subsection (c) of this section by the tenth day after the end of the six-year period.

(f) The six-year period prescribed by subsection (a) of this section ceases to run if the former officeholder files a campaign treasurer appointment during the period.

#### *§20.291. Report of Final Disposition of Unexpended Contributions.*

(a) A former officeholder who disposes of unexpended contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or

other income earned from political contributions under §20.289 of this title (relating to Disposition of Unexpended Contributions) is required to file a report of the final disposition.

(b) A report of final disposition of unexpended contributions must be filed no later than the 30th day after the end of the six-year period prescribed by §20.289(a) of this title.

(c) The report shall be filed with the authority with whom the former officeholder's last required report as an officeholder was required to be filed.

(d) The report shall cover the period that begins on the first day after the period covered by the last report required through the day a report under this section is filed.

#### *§20.293. Contents of Report of Final Disposition of Unexpended Contributions.*

(a) A report of final disposition of unexpended contributions shall include the following information:

- (1) the officeholder's full name,
- (2) the officeholder's address;
- (3) the full name of each person to whom a payment from unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions was made;
- (4) the address of each person to whom such a payment was made,
- (5) the date of each payment,
- (6) the nature of the goods and services received for each payment,
- (7) the amount of each payment, and
- (8) an affidavit, executed by the former officeholder, stating "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

#### *§20.295. Contribution of Unexpended Political Contributions to Candidate or Political Committee*

(a) A former officeholder who contributes unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions to a candidate or political committee must report the contribution on an annual report of unexpended contributions or on a report of final disposition of

unexpended contributions, as applicable. The former officeholder must also report the contribution under subsection (b) of this section

(b) A former officeholder who contributes unexpended political contributions, unexpended interest or other income earned from political contributions, or assets purchased with political contributions or interest or other income earned from political contributions to a candidate or political committee must report each contribution to the filing authority with whom the candidate or political committee receiving the contribution files reports.

(1) The former officeholder must report such contributions on the form used for reports of contributions and expenditures a specific-purpose committee.

(2) The former officeholder must file the report by the due date for the report in which the candidate or political committee receiving the contribution must report the receipt of the contribution.

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 18, 1993

TRD-9333514

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

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

#### Subchapter E. Reports by a Specific-Purpose Committee

- 1 TAC §§20.301, 20.303, 20.305, 20.307, 20.309, 20.311, 20.313, 20.315, 20.317, 20.319, 20.321, 20.323, 20.325, 20.327, 20.329, 20.331, 20.333, 20.335, 20.337, 20.339, 20.341, 20.343

The Texas Ethics Commission adopts new §§ 20.301, 20.303, 20.305, 20.307, 20.309, 20.311, 20.313, 20.315, 20.317, 20.319, 20.321, 20.323, 20.325, 20.327, 20.329, 20.331, 20.333, 20.335, 20.337, 20.339, 20.341, and 20.343, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. These sections are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7034). The changes are primarily non-substantive in nature; however, §§20.305, 20.309, 20.331, and 20.339, have been revised with additional language

The new sections set forth the general rules concerning certain reports filed with the commission, reporting requirements of a candi-

date, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

#### *§20.301. Thresholds for Campaign Treasurer Appointment.*

(a) A specific-purpose committee may not accept political contributions exceeding \$500 and may not make or authorize political expenditures exceeding \$500 without filing a campaign treasurer appointment with the appropriate filing authority.

(b) A specific-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$500 to support or oppose a candidate in a primary or general election for an office listed below unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day.

- (1) a statewide office,
- (2) a seat in the state legislature,
- (3) a seat on the state board of education; or
- (4) a multi-county district office.

#### *§20.303 Appointment of Campaign Treasurer.*

(a) A specific-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.301(a) of this title (relating to Thresholds for Campaign Treasurer Appointment).

(b) After a specific-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all

the requirements of this subchapter, even if the committee has not yet exceeded \$500 in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the specific-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

#### *§20.305 Appointing an Assistant Campaign Treasurer*

(a) A specific-purpose committee for supporting or opposing a candidate for a statewide office, the state legislature, the state board of education, or a multi-county district office or a statewide or district measure may appoint an assistant campaign treasurer by written appointment filed with the commission

(b) A statewide measure is a measure to be voted on by all eligible voters in the state.

(c) A district measure is a measure to be voted on by the voters of a district

(d) The assistant campaign treasurer has the same authority as the campaign treasurer. However, if the campaign treasurer appointment is terminated the assistant campaign treasurer no longer has authority to act as the campaign treasurer.

(e) The campaign treasurer, not the assistant campaign treasurer, is liable for any penalties assessed by the commission for late reports or incomplete reports or for failure to file a report

(f) Section 20.315 of this title (relating to Termination of Campaign Treasurer Appointment) and §20.317 of this title (relating to Termination Report) apply to the appointment and removal of an assistant campaign treasurer

*§20.307 Name of Specific-Purpose Committee.* The name of a specific-purpose committee that supports a candidate for or an officeholder of a statewide office, the state legislature, the state board of education, or a multi-county district office, must include the full name of that candidate or officeholder.

*§20.309 Contents of Specific-Purpose Committee Campaign Treasurer Appointment.* A campaign treasurer appointment for a specific-purpose committee shall include the following information

(1) the full name of the specific-purpose committee,

(2) the address of the specific-purpose committee,

(3) the full name of the person appointing the campaign treasurer;

(4) the following information for the individual appointed campaign treasurer and, if an assistant campaign treasurer is appointed, for that individual also:

(A) the individual's full name;

(B) the individual's residence or business street address;

(C) if the individual's mailing address is different from the street address provided, the mailing address for the individual; and

(D) the individual's telephone number;

(5) for each candidate supported or opposed by the specific-purpose committee:

(A) the full name of the candidate;

(B) the office sought by the candidate, and

(C) an indication whether the specific-purpose committee supports or opposes the candidate;

(6) for each officeholder assisted by the specific-purpose committee

(A) the full name of the officeholder,

(B) the office held by the officeholder, and

(C) an indication that the specific-purpose committee assists the officeholder,

(7) for each measure supported or opposed by the specific-purpose committee

(A) a description of the measure, and

(B) an indication whether the specific-purpose committee supports or opposes the measure; and

(8) the signature of the individual appointed campaign treasurer

#### *§20.311 Updating Certain Information on the Campaign Treasurer Appointment*



(a) Except as provided by subsection (b) of this section, if there is a change in any information that is required to be reported in a specific-purpose committee's campaign treasurer appointment, the campaign treasurer must notify the filing authority of the change no later than the tenth day after the date on which the change occurs.

(b) The campaign treasurer must report a change in the name of or office sought by a candidate whom the specific-purpose committee supports or opposes within 24 hours of the change.

#### *§20.313. Converting to a General-Purpose Committee.*

(a) A specific-purpose committee that changes its operation and becomes a general-purpose committee is subject to the requirements applicable to a general-purpose committee as of the date it files its campaign treasurer appointment as a general-purpose committee with the commission

(b) The campaign treasurer of a specific-purpose committee that becomes a general-purpose committee must deliver written notice of its change in status to the authority with whom the committee was required to file as a specific-purpose committee.

(c) The notice required under subsection (b) of this section is due no later than the next deadline for filing a report under this subchapter that:

(1) occurs after the committee's change in status; and

(2) would be applicable to the political committee if it were still a specific-purpose committee.

(d) The notice must state that future reports will be filed with the commission.

(e) The notice required under subsection (b) of this section is in addition to the requirement that the new general-purpose committee file a campaign treasurer appointment with the commission before it exceeds \$500 in political expenditures or \$500 in political contributions as a general-purpose committee.

(f) As provided by §20.401 of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee), the new general-purpose committee may not make political expenditures totaling more than \$500 unless the committee has accepted political contributions from at least ten people and has filed its campaign treasurer appointment as a general-purpose committee not later than the 60th day before the date the expenditure is made that causes the committee's total expenditures to exceed \$500.

#### *§20.315. Termination of Campaign Treasurer Appointment.*

(a) A specific-purpose committee may terminate a campaign treasurer appointment at any time by:

(1) notifying the filing authority in writing of the termination;

(2) filing a campaign treasurer appointment for a successor campaign treasurer; or

(3) filing a dissolution report.

(b) A committee's campaign treasurer may resign by immediately notifying both the appointing authority and the filing authority in writing.

(c) Except as provided by subsection (e) of this section, if the campaign treasurer resigns or otherwise leaves the position, the termination is effective on the date the committee actually receives the notice or on the date the filing authority actually receives the notice, whichever is later.

(d) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to subsection (c) of this section.

(e) For purposes of the termination report required by §20.317 of this title (relating to Termination Report), a campaign treasurer's resignation is effective on the date the treasurer resigns as provided by subsection (b) of this section.

(f) Section 20.23 of this title (relating to Timeliness of Action by Mail) applies to subsection (e) of this section.

(g) A termination of a specific-purpose committee's campaign treasurer appointment and the filing of the termination report by themselves do not dissolve the specific-purpose committee. A specific-purpose committee can be dissolved only by filing a dissolution report.

#### *§20.317. Termination Report.*

(a) If the campaign treasurer appointment of a specific-purpose committee is terminated, the campaign treasurer whose appointment was terminated shall file a termination report that contains the information listed in §20.331 of this title (relating to Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures).

(b) A termination report is not required if the termination occurs on the last day of a reporting period under this subchapter and the campaign treasurer files a report for that period as provided by this subchapter.

(c) A termination report covers a period that begins on the day after the

period covered by the last report of contributions and expenditures required to be filed under this subchapter (other than a telegram report or a special session report) or the day the campaign treasurer appointment was filed (if the committee has not yet filed a report of contributions and expenditures). The period covered by the report ends on the day the termination of the campaign treasurer appointment is effective.

(d) The report shall be filed no later than the tenth day after the date the termination of the campaign treasurer appointment is effective.

(e) Activity reported in a termination report is not required to be included in any subsequent report of the specific-purpose committee that is filed under this subchapter.

#### *§20.319 Notice to Candidate or Officeholder.*

(a) The campaign treasurer of a specific-purpose committee that accepts political contributions or makes political expenditures for a candidate or officeholder shall notify the affected candidate or officeholder of that fact in accordance with this section.

(b) This section does not apply to a specific-purpose committee that has not appointed a campaign treasurer in accordance with §20.303(b) of this title (relating to Appointment of Campaign Treasurer).

(c) The notice required by this section shall be in writing and shall include:

(1) the full name of the specific-purpose committee;

(2) the address of the specific-purpose committee;

(3) the full name of the specific-purpose committee's campaign treasurer;

(4) the address of the specific-purpose committee's campaign treasurer;

(5) a statement that the committee is a specific-purpose committee, and

(6) a statement that the specific-purpose committee has accepted political contributions or has made political expenditures on behalf of the candidate or officeholder.

(d) The notice required by this section shall be delivered no later than the end of the reporting period in which the reportable activity occurs.

*§20.321. Involvement in More Than One Election by Certain Specific-Purpose Committees.* A specific-purpose committee that supports or opposes more than one candidate or measure may be required to file reports covering overlapping periods. If

so, the committee is only required to report activity occurring during the period of overlap on the first report on which the activity is required to be reported.

#### §20.323. Semiannual Reports.

(a) The campaign treasurer of a specific-purpose committee shall file semiannual reports as provided by this section.

(b) One semiannual report is due no earlier than July 1 and no later than July 15.

(1) The period covered by a report under this subsection begins, on the later of the following dates, as applicable:

(A) January 1;

(B) the day the committee's campaign treasurer appointment was filed, if this is the committee's first report filed under this subchapter (other than a telegram report or a special session report), or

(C) the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report)

(2) The period covered by a report under this subsection ends on June 30

(c) One semiannual report is due no earlier than January 1 and no later than January 15.

(1) The period covered by a report under this subsection begins on the later of the following dates, as applicable:

(A) July 1;

(B) the day the committee's campaign treasurer appointment was filed, if this is the committee's first report filed under this subchapter (other than a telegram report or a special session report); or

(C) the first day after the period covered by the last report required by this subchapter (other than a telegram report or a special session report)

(2) The period covered by a report under this subsection ends on December 31.

#### §20.325. Pre-election Reports

(a) The campaign treasurer of a specific-purpose committee that supports or opposes a candidate or a measure in an election shall file pre-election reports as provided by subsections (d) and (e) of this section

(b) For purposes of this section, supporting or opposing a candidate or a measure in an election means accepting po-

litical contributions or making political expenditures to support or oppose the candidate or measure.

(c) The campaign treasurer of a specific-purpose committee that has declared an intention to file under the modified schedule in accordance with §20.329 of this title (relating to Modified Reporting) and that remains eligible to file under the modified schedule is not required to file pre-election reports

(d) A specific-purpose committee that supports or opposes a candidate or measure in an election during the reporting period set out in the next sentence of this subsection must file a report under this subsection. The report required by this subsection covers a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report or special session report) filed under this subchapter, as applicable, and ends on the 40th day before the election. The report due under this subsection shall be filed no later than the 30th day before the election

(e) A specific-purpose committee that was required to file a pre-election report under subsection (d) of this section must file a report under this subsection by the eighth day before the election. The report shall cover a period that begins on the 39th day before the election and ends on the tenth day before the election. The report is due no later than the eighth day before the election.

(f) A committee that was not required to file a report under subsection (d) of this section is required to file a report by the eighth day before the election if the committee supports or opposes a candidate or measure during the period that begins on the 39th day before the election and ends on the tenth day before the election. A report required under this subsection shall cover a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report or special session report) filed under this subchapter, as applicable, and ends on the tenth day before the election.

#### §20.327. Runoff Report.

(a) A specific-purpose committee that supports or opposes a candidate or measure in an election and in an ensuing runoff election shall file a runoff report, except as provided by subsection (b) of this section.

(b) A specific-purpose committee that has declared an intention to file under the modified schedule in accordance with

§20.329 of this title (relating to Modified Reporting) and that remains eligible to file under the modified schedule is not required to file a runoff report.

(c) A runoff report is due no later than the eighth day before the runoff election.

(d) A runoff report covers the period that begins on the ninth day before the date of the main election and ends on the tenth day before the runoff.

(e) For purposes of this section, supporting or opposing a candidate or a measure in an election means accepting political contributions or making political expenditures to support or oppose the candidate or measure.

#### §20.329. Modified Reporting.

(a) A specific-purpose committee that would otherwise be required to file pre-election reports and a runoff report, if necessary, may choose to file under the modified schedule if the committee does not intend to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with any election in an election cycle.

(b) Under the modified schedule, the campaign treasurer of a specific-purpose committee is not required to file pre-election reports or a runoff report.

(c) To select modified filing, a specific-purpose committee must file a declaration of the committee's intent not to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with the election. The declaration must include a statement that the committee understands that if either one of those limits is exceeded, the committee's campaign treasurer will be required to file pre-election reports and, if necessary, a runoff report

(d) A declaration under subsection (c) of this section is filed with the committee's campaign treasurer appointment

(e) To file under the modified schedule, a specific-purpose committee must file the declaration required under subsection (c) of this section no later than the 30th day before the first election to which the declaration applies. A declaration filed under subsection (c) of this section is valid for one election cycle only.

(f) Except as provided by subsection (g) of this section, a specific-purpose committee's campaign treasurer must file pre-election reports and, if necessary, a runoff report under the schedule set out in §20.325 of this title (relating to Pre-election Reports) and §20.327 of this title (relating to Runoff Report) if the committee exceeds

either of the \$500 limits for modified reporting.

(g) If a specific-purpose committee exceeds either of the \$500 limits for modified reporting after the 30th day before the election, the committee's campaign treasurer must file a report not later than 48 hours after exceeding the limit.

(1) The period covered by a 48-hour report shall begin either on the day the committee's campaign treasurer appointment was filed (if it is the committee's first report of contributions and expenditures) or on the first day after the period covered by the last report (other than a telegram report or special session report) filed under this subchapter, as applicable.

(2) The period covered by a 48-hour report shall continue through the day the committee exceeded one of the limits for modified reporting.

(h) A specific-purpose committee that exceeds either of the \$500 limits for modified reporting after the 30th day before the election and on or before the tenth day before the election must file a report under §20.325(f) of this title (relating to Pre-election Reports), in addition to any required telegram reports.

*§20.331. Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures.* Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the specific-purpose committee;

(2) the address of the specific-purpose committee;

(3) the full name of the specific-purpose committee's campaign treasurer;

(4) the residence or business street address of the specific-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) for each candidate supported or opposed by the specific-purpose committee:

(A) the full name of the candidate;

(B) the office sought by the candidate; and

(C) an indication of whether the committee supports or opposes the candidate;

(8) for each officeholder assisted by the specific-purpose committee:

(A) the full name of the officeholder;

(B) the office held by the officeholder; and

(C) an indication of whether the committee supports or opposes the officeholder;

(9) for each measure supported or opposed by the specific-purpose committee:

(A) a description of the measure; and

(B) an indication of whether the committee supports or opposes the measure;

(10) for each political expenditure by the committee that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the specific-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the specific-purpose committee;

(11) on a separate page, the following information for each expenditure from political contributions made to a business in which the candidate has a participating interest of more than 10%, holds a position on the governing body of the business, or serves as an officer of the business:

(A) the full name of the business to which the expenditure was made;

(B) the address of the business to which the expenditure was made;

(C) the date of the expenditure;

(D) the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(12) if the specific-purpose committee supports or opposes measures exclusively, for each contribution accepted from a labor organization or corporation, as defined by §20.1 of this title (relating to Definitions):

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution; and

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

(13) for each person from whom the specific-purpose committee accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than \$50 in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than \$50 in value:

(A) the full name of the person;

(B) the address of the person;

(C) the total amount of contributions;

(D) the date each contribution was accepted; and

(E) a description of any in-kind contribution;

(14) for each person from whom the specific-purpose committee accepted a pledge or pledges to provide more than \$50 in money or to provide goods or services worth more than \$50:

(A) the full name of the person making a pledge;

(B) the address of the person making a pledge,

(C) the amount of the pledge;

(D) the date each pledge was accepted, and

(E) a description of any goods or services pledged;

(15) the total of all pledges accepted during the period for \$50 and less from a person, except those reported under paragraph (14) of this section,

(16) for each person making a loan or loans to the specific-purpose committee for campaign or officeholder purposes if the total amount loaned by the person during the period is more than \$50.

(A) the full name of the person or financial institution making the loan,

(B) the address of the person or financial institution making the loan,

(C) the amount of the loan,

(D) the date of the loan,

(E) the interest rate,

(F) the maturity date,

(G) the collateral for the loan, if any, and

(H) if the loan has guarantors

(i) the full name of each guarantor,

(ii) the address of each guarantor,

(iii) the principal occupation of each guarantor,

(iv) the name of the employer of each guarantor, and

(v) the amount guaranteed by each guarantor,

(17) the total amount of loans accepted during the period for \$50 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except those reported under paragraph (16) of this section,

(18) for political expenditures made during the reporting period that total more than \$50 to a single payee

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure, for example, the goods or services for which the expenditure was made; and

(E) the amount of the expenditure,

(19) for each direct campaign expenditure benefiting a candidate or officeholder, except for a direct campaign expenditure made by a committee supporting only one candidate or officeholder

(A) the name of the candidate or officeholder, and

(B) the office sought or held by the candidate or officeholder.

(20) for each non-political expenditure made from political contributions, other than expenditures reported under paragraph (11) of this section

(A) the date of the payment,

(B) the full name of the person to whom the payment was made,

(C) the address of the person to whom the payment was made,

(D) the nature of the goods or services for which the payment was made, and

(E) the amount of the payment,

(21) for each political contribution accepted from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee),

(22) the following total amounts

(A) the total principal amount of all outstanding loans as of the last day of the reporting period,

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less,

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$50 and less; and

(E) the total amount of all political expenditures;

(23) if applicable, a statement that no reportable activity occurred during the reporting period; and

(24) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

### §20.333. *Telegram Report by Certain Specific-Purpose Committees.*

(a) As provided by subsection (b) of this section, certain specific-purpose committees must file reports about certain contributions accepted during the period that begins on the ninth day before an election and ends at noon on the second day before an election. Reports under this section are known as "telegram" reports, although they may be filed by hand or by telephonic facsimile machine as well as by telegram.

(b) Campaign treasurers for the following specific-purpose committees must file telegram reports:

(1) a specific-purpose committee for supporting or opposing a candidate for state senator that, during the period described in subsection (a) of this section, accepts one or more political contributions from a person that in the aggregate exceed \$1,000; and

(2) a specific-purpose committee for supporting or opposing a candidate for state representative that, during the period described in subsection (a) of this section, accepts political contributions from a person that in the aggregate exceed \$200.

(c) The campaign treasurer of a specific-purpose committee must file a report no later than 48 hours after the committee accepts a contribution from a person that triggers the requirement to file the telegram report.

(d) The report filed under subsection (c) of this section may be delivered by hand, by telegram, or by telephonic facsimile machine. Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to a report filed under this section.

(e) If, during the reporting period for telegram contributions, a committee receives additional contributions from a person whose previous contribution or contributions have triggered the requirement to file a telegram report during the period, the campaign treasurer for the committee must file an additional telegram report for each such contribution. Each such telegram report is due no later than 48 hours after the committee accepts the contribution.

(f) The campaign treasurer of a specific-purpose committee must file a telegram report for each person whose contribution or contributions made during the period for telegram reports exceed the threshold for telegram reports.

(g) A campaign treasurer of a specific-purpose committee must also report contributions reported on a telegram report on the next semiannual, pre-election, or runoff report filed, as applicable.

*§20.335. Contents of Telegram Report by a Specific-Purpose Committee Supporting or Opposing a Candidate for State Senator or State Representative.* A telegram report shall include the following information:

(1) the full name of the specific-purpose committee,

(2) the full name of the campaign treasurer;

(3) the name of the person making a contribution or contributions that triggered the requirement to file a telegram report;

(4) the address of the person making the contribution or contributions;

(5) the amount of each contribution;

(6) the date each contribution was accepted; and

(7) a description of any in-kind contribution

*§20.337. Special Session Reports by Specific-Purpose Committees.*

(a) A campaign treasurer of a specific-purpose committee for supporting, opposing, or assisting a candidate for or holder of a statewide office or the legislature that accepts a political contribution during the period that begins on the date the governor signs a proclamation calling a special legislative session and ends on the date of final adjournment must file a special session report.

(b) A special session report must be filed with the commission not later than the 30th day after the date of final adjournment of the special session.

(c) A special session report is a report of contributions only, not expenditures. Expenditures made during the period covered by a special session report are required to be reported in the next applicable sworn report of contributions and expenditures.

(d) Contributions reported in a special session report are not to be reported in any other report.

(e) A determination to accept or refuse a political contribution received during the period covered by a special session report shall be made no later than the third day after the date the contribution is received

(f) A contribution that is refused under subsection (e) of this section must be returned no later than the 30th day after the date of final adjournment. A contribution not returned by that date will be deemed accepted

(g) A specific-purpose committee's campaign treasurer is not required to file a separate special session report if another report is due no later than the tenth day after the date a report required under this section would be due

*§20.339. Contents of the Special Session Report.* A report required by §20.337 of this title (relating to Special Session Reports by Specific-Purpose Committees) shall include the following information.

(1) the specific-purpose committee's full name;

(2) the specific-purpose committee's address,

(3) the committee campaign treasurer's full name,

(4) the campaign treasurer's residence or business street address;

(5) for each candidate supported or opposed by the specific-purpose committee:

(A) the full name of the candidate;

(B) the office sought by the candidate; and

(C) an indication of whether the committee supports or opposes the candidate.

(6) for each officeholder supported or opposed by the committee

(A) the full name of the officeholder;

(B) the office held by the officeholder, and

(C) an indication of whether the committee supports or opposes the officeholder,

(7) the date each contribution was accepted,

(8) the full name of each person making a contribution;

(9) the address of each person making a contribution;

(10) the amount of each contribution accepted during the period;

(11) a description of any in-kind contribution; and

(12) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

*§20.341. Dissolution Report.*

(a) The campaign treasurer of a specific-purpose committee may file a dissolution report at any time that the committee expects no further reportable activity to occur.

(b) A dissolution report does not have to be filed by a designated deadline

(c) Filing a dissolution report:

(1) relieves the campaign treasurer of the duty to file additional reports under this subchapter; and

(2) terminates the specific-purpose committee's campaign treasurer appointment.

*§20.343. Contents of Dissolution Report.* A dissolution report must contain.

(1) the information described in §20.331 of this title (relating to Contents of Specific-Purpose Committee Sworn Report of Contributions and Expenditures); and

(2) the following sworn statement, signed by the specific-purpose committee's campaign treasurer, and properly notarized "I, the undersigned campaign treasurer, do not expect the occurrence of any further reportable activity by this specific-purpose committee for this or any other campaign or election for which reporting under the Election Code is required. I declare that all of the information required to be reported by me has been reported. I understand that designating a report as a dissolution report terminates the appointment of campaign treasurer. I further understand the circumstances in which the specific-purpose committee may not make or authorize political expenditures or accept political contributions without having an appointment of campaign treasurer on file."

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 18, 1993.

TRD-9333513 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

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

◆ ◆ ◆  
Subchapter F. Reporting Requirement for a General-Purpose Committee

- 1 TAC §§20.401, 20.403, 20.405, 20.407, 20.409, 20.411, 20.413, 20.415, 20.417, 20.419, 20.421, 20.423, 20.425, 20.427, 20.429, 20.431, 20.433, 20.435, 20.437, 20.439, 20.441

The Texas Ethics Commission adopts new §§20.401, 20.403, 20.405, 20.407, 20.409, 20.411, 20.413, 20.415, 20.417, 20.419, 20.421, 20.423, 20.425, 20.427, 20.429, 20.431, 20.433, 20.435, 20.437, 20.439, and 20.441, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. The new sections are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7040). The changes are primarily non-substantive in nature; however, §§20.407, 20.409, 20.411, and 20.433 have been revised with additional language.

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee, rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations, rules concerning a political party's county executive committee, reports by a candidate for state party chair, and reports by political committees supporting or opposing a candidate for state chair of a political party

The sections will set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt

rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

§20.401. *Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee.*

(a) A general-purpose committee may not accept political contributions exceeding \$500 and may not make or authorize political expenditures exceeding \$500 without filing a campaign treasurer appointment with the commission.

(b) Unless the committee's campaign treasurer appointment was filed not later than the 30th day before the appropriate election day, a general-purpose committee may not knowingly make or authorize campaign contributions or campaign expenditures exceeding \$500 to support or oppose a candidate in a primary or general election for the following:

- (1) a statewide office;
- (2) a seat in the state legislature;
- (3) a seat on the state board of education; or
- (4) a multi-county district office.

(c) A general-purpose committee may not make or authorize political expenditures totaling more than \$500 unless the committee has:

- (1) filed its campaign treasurer appointment not later than the 60th day before the date the expenditure is made that causes the total expenditures to exceed \$500, and
- (2) received contributions from at least ten persons.

(d) Subsection (c) of this section does not apply to a general-purpose committee that accepts contributions from a multi-candidate political committee (as defined by the Federal Election Campaign Act) that is registered with the Federal Election Commission, provided that the general-purpose committee is in compliance with §22.7 of this title (relating to Contribution from Out-of-State Committee).

§20.403. *Reporting Requirements for Certain General-Purpose Committees.*

(a) A general-purpose committee that is established by a political party's county executive committee is subject to Subchapter I of this chapter (relating to Rules Applicable to a Political Party's County Executive Committee). Subchapter I of this chapter prevails over this subchapter in the case of conflict.

(b) A general-purpose committee that is the principal political committee of a political party is subject to Subchapter G of

this chapter (relating to Rules Applicable to a Principal Political Committee of a Political Party). Subchapter G of this chapter prevails over this subchapter in the case of conflict.

(c) A general-purpose committee that supports or opposes a candidate for state chair of a political party is subject to Subchapter K of this chapter (relating to Reports by Political Committees Supporting or Opposing a Candidate for State Chair of Political Party). Subchapter K of this chapter prevails over this subchapter in the case of conflict.

§20.405. *Campaign Treasurer Appointment for a General-Purpose Political Committee.*

(a) A general-purpose committee may appoint a campaign treasurer at any time before exceeding the thresholds described in §20.401(a) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

(b) After a general-purpose committee appoints a campaign treasurer, the campaign treasurer must comply with all the requirements of this subchapter, even if the committee has not yet exceeded \$500 in political contributions or expenditures.

(c) With the exception of the campaign treasurer appointment, the individual named as a committee's campaign treasurer is legally responsible for filing all reports of the general-purpose committee, including a report following the termination of his or her appointment as campaign treasurer.

§20.407. *Appointing an Assistant Campaign Treasurer.*

(a) A general-purpose committee may appoint an assistant campaign treasurer by written appointment filed with the commission.

(b) The assistant campaign treasurer has the same authority as the campaign treasurer. However, if the campaign treasurer appointment is terminated the assistant campaign treasurer no longer has authority to act as the campaign treasurer.

(c) The campaign treasurer, not the assistant campaign treasurer, is liable for any penalties assessed by the commission for late reports or incomplete reports or for failure to file a report.

(d) Section 20.415 of this title (relating to Termination of Campaign Treasurer Appointment) and §20.417 of this title (relating to Termination Report) apply to the appointment and removal of an assistant campaign treasurer.

*§20.409. Name of General-Purpose Committee.*

(a) The name of a general-purpose committee must include the full name of each corporation, labor organization, or other association or legal entity other than an individual that directly establishes, administers, or controls the general-purpose committee.

(b) A corporation, labor organization, or other association or legal entity that "directly establishes, administers, or controls" a general-purpose committee is one that has:

(1) the authority to actively participate in determining to whom the general-purpose committee makes political contributions or for what purposes the general-purpose committee makes political expenditures, or

(2) the authority to designate a person to a position of authority with the general-purpose committee, including that of an officer or director of the general-purpose committee

(c) The name of an entity used in the name of a general-purpose committee may be a commonly recognized acronym by which the entity is known.

(d) The name of a general-purpose committee may not be the same as or deceptively similar to the name of any other general-purpose committee whose campaign treasurer appointment is filed with the commission. The commission shall determine whether the name of a general-purpose political committee is in violation of this prohibition and shall immediately notify the campaign treasurer of the offending political committee of that determination. The campaign treasurer of the political committee must file a name change with the commission not later than the 14th day after the date of notification.

*§20.411. Contents of General-Purpose Committee Campaign Treasurer Appointment.* A campaign treasurer appointment for a general-purpose committee shall include the following information:

(1) the full name of the general-purpose committee, and, if the name is an acronym, the words the acronym represents,

(2) the address of the general-purpose committee;

(3) the full name of the person appointing the campaign treasurer;

(4) the following information for the individual appointed campaign treasurer and, if an assistant campaign treasurer is appointed, for that individual as well:

(A) the individual's full name;

(B) the individual's residence or business street address,

(C) if the individual's mailing address is different from the street address provided, the mailing address for the individual, and

(D) the individual's telephone number,

(5) one of the following:

(A) the full name and any acronym of the name that is used in the name of the general-purpose committee pursuant to §20.409 of this title (relating to Name of general-purpose Committee), if applicable, or

(B) the full name of each person who determines to whom the general-purpose committee makes contributions; or

(C) the full name of each person who determines for what purposes the general-purpose committee makes expenditures;

(6) the name of each other general-purpose committee to which the general-purpose committee intends to make political contributions,

(7) an indication whether the general-purpose committee will file under the regular reporting schedule pursuant to §§20.423, 20.425, and 20.427 of this title (relating to Semiannual Reports, Pre-election Reports, Runoff Report) or under the monthly schedule pursuant to §20.429 of this title (relating to the Option to File Monthly), and

(8) the signature of the individual appointed campaign treasurer

*§20.413 Updating Information on the Campaign Treasurer Appointment*

(a) The campaign treasurer must notify the commission in writing of any change in the campaign treasurer's address no later than the tenth day after the date on which the change occurs

(b) If any of the information required to be included in the general-purpose committee's appointment changes, excluding changes in the campaign treasurer's address, the campaign treasurer shall file a corrected appointment with the commission no later than the 30th day after the date the change occurs

*§20.415. Termination of Campaign Treasurer Appointment.*

(a) A general-purpose committee may terminate a campaign treasurer appointment at any time by:

(1) notifying the commission in writing of the termination,

(2) filing a campaign treasurer appointment for a successor campaign treasurer; or

(3) filing a dissolution report.

(b) A committee's campaign treasurer may resign by immediately notifying both the appointing authority and the filing authority in writing

(c) If the campaign treasurer resigns or otherwise leaves the position, the termination is effective on the date the committee actually receives the notice or on the date the filing authority actually receives the notice, whichever is later. Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to this subsection

(d) For purposes of the termination report required by §20.417 of this title (relating to Termination Report), a campaign treasurer's resignation is effective on the date the treasurer resigns, as provided by subsection (b) of this section. Section 20.23 of this title (relating to Timeliness of Action by Mail) applies to this subsection.

(e) A termination of a general-purpose committee's campaign treasurer appointment and the filing of the termination report by themselves do not dissolve the general-purpose committee. A general-purpose committee can be dissolved only by filing a dissolution report with the commission

*§20.417 Termination Report*

(a) If the campaign treasurer appointment of a general-purpose committee is terminated, the campaign treasurer whose appointment was terminated shall file a termination report that contains the information listed in §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures)

(b) A termination report is not required if the termination occurs on the last day of a reporting period under this subchapter and the campaign treasurer files a report for that period as provided by this subchapter

(c) A termination report covers a period that begins on either the day after the period covered by the last report of contributions and expenditures required to be filed under this subchapter (other than a telegram report) or the day the campaign

treasurer appointment was filed (if the committee has not yet filed a report of contributions and expenditures). The period covered by the report continues through the day the termination of the campaign treasurer appointment is effective.

(d) The report shall be filed not later than the tenth day after the date the termination of the campaign treasurer appointment is effective.

(e) Activity reported in a termination report is not required to be included in any subsequent report of the general-purpose committee that is filed under this subchapter

#### §20.419 *Converting to a Specific-Purpose Committee.*

(a) A general-purpose committee that changes its operation and becomes a specific-purpose committee is subject to the requirements applicable to a specific-purpose committee as of the date it files its campaign treasurer appointment as a specific-purpose committee

(b) The campaign treasurer of a general-purpose committee that changes its operation and becomes a specific-purpose committee shall deliver written notice of the change in status to the commission

(c) The notice shall identify the filing authority with whom future filings by the committee are expected to be made

(d) The notice required by this section is due not later than the next deadline for filing a report under this subchapter that:

(1) occurs after the change in status, and

(2) would be applicable to the committee if it were still a general-purpose committee

(e) As provided by §20.301 of this title (relating to Thresholds for Campaign Treasurer Appointment), a new specific-purpose committee involved in an election supporting or opposing a candidate for a statewide office, the state legislature, the state board of education, or a multi-county district office in a primary or general election may not accept political contributions exceeding \$500 and may not make or authorize political expenditure exceeding \$500 unless the committee's campaign treasurer appointment as a specific-purpose committee has been on file at least 30 days before the applicable election day.

#### §20.421 *Notice to Candidate or Officeholder.*

(a) The campaign treasurer of a general-purpose committee that accepts political contributions or makes political expenditures for a candidate or officeholder

shall notify the affected candidate or officeholder in accordance with this section.

(b) This section does not apply to a general-purpose committee that has not appointed a campaign treasurer in accordance with §20.405 of this title (relating to Campaign Treasurer Appointment for a General-purpose Political Committee).

(c) The notice required by this section shall be in writing and shall include:

(1) the full name of the general-purpose committee,

(2) the address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer,

(4) the address of the general-purpose committee's campaign treasurer,

(5) a statement that the committee is a general-purpose committee, and

(6) a statement that the general-purpose committee has accepted political contributions or has made political expenditures on behalf of the candidate or officeholder

(d) The notice required by this section shall be delivered no later than the end of reporting period in which the reportable activity occurs

#### §20.423. *Semiannual Reports*

(a) Except as provided by subsection (d) of this section, the campaign treasurer of a general-purpose committee shall file semiannual reports as provided by this section

(b) One semiannual report is due no earlier than July 1 and no later than July 15.

(1) The report due by July 15 shall cover a period that begins on either January 1, the day the committee's campaign treasurer appointment was filed, or the first day after the period covered by the last report required to be filed under this subchapter (other than a telegram report), as applicable

(2) The period covered by the report due on July 15 ends on June 30.

(c) One semiannual report is due no earlier than January 1 and no later than January 15.

(1) The report due on January 15 shall cover a period that begins on either July 1, the day the committee's campaign treasurer appointment was filed, or the first day after the period covered by the last report required to be filed under this subchapter (other than a telegram report), as applicable

(2) The period covered by the report due on January 15 ends on December 31.

(d) A general-purpose committee that files monthly reports under §20.429 of this title (relating to Option to File Monthly) does not file under this section.

#### §20.425. *Pre-election Reports.*

(a) A general-purpose committee that accepts political contributions or makes political expenditures in support of or in opposition to a candidate or measure to be voted on in an election shall file pre-election reports as provided by subsections (c) and (d) of this section.

(b) A general-purpose committee that files under §20.429 of this title (relating to Option to File Monthly) does not file under this section.

(c) The first pre-election report is due no later than the 30th day before the election.

(1) A general-purpose committee that accepts a political contribution or makes a political expenditure to support or oppose a candidate or measure in the election during the period set out in paragraph (2) of this subsection must file a report under this subsection

(2) The report covers a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report) filed under this subchapter, as applicable, and ends on the 40th day before the election

(d) The second pre-election report is due no later than the eighth day before the election. The period covered by this report depends on whether the committee was required to file a report under subsection (c) of this section.

(1) A general-purpose committee that was required to file a pre-election report under subsection (c) of this section must file a report under this subsection by the eighth day before the election. The report shall cover a period that begins on the 39th day before the election and ends the tenth day before the election.

(2) A committee that was not required to file a report by the 30th day before the election is required to file a report by the eighth day before the election if the committee accepts a political contribution or makes a political expenditure to support or oppose a candidate or measure during the period that begins on the 39th day before the election and ends on the tenth day before the election.



(A) A report that is required to be filed under paragraph (2) of this subsection shall cover a period that begins on either the day the committee's campaign treasurer appointment was filed or the first day after the period covered by the last report (other than a telegram report) filed under this subchapter, as applicable.

(B) The period covered by a report under paragraph (2) of this subsection ends on the tenth day before the election.

#### §20.427. Runoff Report.

(a) A general-purpose committee that accepts political contributions or makes political expenditures to support or oppose a candidate or measure in an election and in an ensuing runoff election shall file a runoff report, except as provided by §20.429 of this title (relating to Option to File Monthly).

(b) A runoff report is due no later than the eighth day before the runoff election.

(c) A runoff report covers the period that begins on the ninth day before the date of the main election and ends on the tenth day before the runoff.

#### §20.429. Option to File Monthly.

(a) As an alternative to filing semi-annual, pre-election, and runoff reports, a general-purpose committee may file monthly reports.

(b) A general-purpose committee that files on the monthly filing schedule must file telegram reports required by §20.435 of this title (relating to Telegram Reports by Certain general-purpose Committees).

(c) To be entitled to file monthly reports, the general-purpose committee must deliver written notice of its intent to file monthly to the commission.

(1) A general-purpose committee may file notice of its intent to file monthly at the time the committee files its campaign treasurer appointment.

(2) A general-purpose committee that does not file notice of its intent to file monthly at the time it files its campaign treasurer appointment may file the notice only during the period that begins on January 1 and ends on January 15.

(d) A general-purpose committee that files monthly reports may revert to the regular filing schedule prescribed by §20.423 of this title (relating to Semiannual Reports), §20.425 of this title (relating to Pre-election Reports), and §20.427 of this title (relating to Runoff Report) by deliver-

ing notice to the commission of the general-purpose committee's intent to revert.

(1) The notice must be delivered in writing not earlier than January 1 or later than January 15 of the year for which the general-purpose committee intends to revert to the regular reporting schedule.

(2) The notice must include a report of all political contributions accepted and all political expenditures made that were not previously reported.

#### §20.431. Monthly Reporting.

(a) A monthly report filed by a general-purpose committee shall include the information required by §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures), except that the threshold reporting amount of \$50 set out in §20.433(11), (12)-(16), and (20) of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures) does not apply to a general-purpose committee reporting monthly. For a general-purpose committee reporting monthly, the threshold reporting amount under §20.433(11)-(16) and (20) of this title is \$10.

(b) A monthly report is due no later than the fifth day of the month following the end of the period covered by the report.

(c) Except for the first monthly report filed, a monthly report covers a period that begins on the 26th day of one month and ends on the 25th day of the next month.

(d) The beginning day for the first monthly report filed by a general-purpose committee shall be as follows:

(1) For a general-purpose committee that has been filing on the regular schedule and chooses monthly filing between January 1 and January 15 of a particular year, the first report will cover a period that begins on January 1 of that year.

(2) For a general-purpose committee that elected to file monthly at the time it filed its campaign treasurer appointment, the period covered by the first monthly report depends on the day of the month that the campaign treasurer was appointed.

(A) If the general-purpose committee filed its campaign treasurer appointment before the 25th of the month, the first report will cover a period that begins on the day the appointment was filed and ends on the 25th day of the same month.

(B) If the general-purpose committee filed its campaign treasurer appointment on or after the 25th of the month,

the first report will cover the period that begins on the day the appointment is filed and ends on the 25th day of the next month.

§20.433. Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures. Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include the following information:

(1) the full name of the general-purpose committee;

(2) the address of the general-purpose committee;

(3) the full name of the general-purpose committee's campaign treasurer;

(4) the residence or business street address of the general-purpose committee's campaign treasurer;

(5) the committee campaign treasurer's telephone number;

(6) the identity and date of the election for which the report is filed, if applicable;

(7) the full name of each identified candidate or measure or classification by party of candidates supported or opposed by the general-purpose committee and an indication of whether the general-purpose committee supports or opposes each listed candidate, measure, or classification by party of candidates;

(8) the full name of each identified officeholder or classification by party of officeholders assisted by the general-purpose committee;

(9) if the general-purpose committee supports or opposes measures exclusively, for each contribution accepted from a corporation as defined by §20.1 of this title (relating to Definitions):

(A) the date each contribution was accepted;

(B) the full name of the corporation or labor organization making the contribution;

(C) the address of the corporation or labor organization making the contribution;

(D) the amount of the contribution; and

(E) a description of any in-kind contribution;

(10) for each political expenditure by the general-purpose committee that

was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the general-purpose committee during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the general-purpose committee;

(11) for each person from whom the general-purpose committee accepted a political contribution other than a pledge or a loan of more than \$50 in value, or political contributions other than pledges or loans that total more than \$50 in value (or more than \$10 for a general-purpose committee reporting monthly):

(A) the date each contribution was accepted;

(B) the full name of the person making the contribution;

(C) the address of the person making the contribution;

(D) the principal occupation of the person making the contribution;

(E) the amount of the contribution; and

(F) a description of any in-kind contribution;

(12) for each person from whom the general-purpose committee accepted a pledge or pledges to provide more than \$50 in money or to provide goods or services worth more than \$50 (more than \$10 for a general-purpose committee reporting monthly):

(A) the full name of the person making the pledge;

(B) the address of the person making the pledge;

(C) the principal occupation of the person making the pledge;

(D) the amount of each pledge;

(E) the date each pledge was accepted; and

(F) a description of any goods or services pledged;

(13) the total of all pledges accepted during the period for \$50 and less from a person, except for those reported under paragraph (12) of this section;

(14) for each person making a loan or loans to the general-purpose committee for campaign purposes if the total amount loaned by the person during the period is more than \$50 (more than \$10 for a general-purpose committee reporting monthly):

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any; and

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(15) the total amount of loans accepted during the period for \$50 and less from persons other than financial institutions engaged in the business of making loans for more than one year, except for those reported under paragraph (14) of this section;

(16) for political expenditures made during the reporting period that total

more than \$50 (more than \$10 for a general-purpose committee reporting monthly) to a single payee:

(A) the full name of the person to whom each expenditure was made;

(B) the address of the person to whom the expenditure was made;

(C) the date of the expenditure;

(D) the purpose of the expenditure, for example, the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(17) for each non-political expenditure made from political contributions:

(A) the date of each payment;

(B) the full name of the person to whom the payment was made;

(C) the address of the person to whom the payment was made;

(D) the nature of the goods or services for which the payment was made; and

(E) the amount of the payment;

(18) for each candidate or officeholder who benefits from a direct campaign expenditure made by the committee:

(A) the name of the candidate or officeholder; and

(B) the office sought or held by the candidate or officeholder;

(19) for each political contribution from an out-of-state political committee, the information required by §22.7 of this title (relating to Contribution from Out-of-State Committee);

(20) The following total amounts:

(A) the total principal amount of all outstanding loans as of the last day of the reporting period;

(B) the total amount or an itemized listing of political contributions (other than pledges, loans, or guarantees of loans) of \$50 and less (\$10 and less for a general-purpose committee reporting monthly);

(C) the total amount of all political contributions (other than pledges, loans, or guarantees of loans);

(D) the total amount or an itemized listing of the political expenditures of \$50 and less (\$10 and less for a general-purpose committee reporting monthly); and

(E) the total amount of all political expenditures;

(21) if applicable, a statement that no reportable activity occurred during the reporting period; and

(22) an affidavit, executed by the campaign treasurer, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

#### *§20.435. Telegram Reports by Certain General-Purpose Committees.*

(a) In addition to other reports required by this chapter, a general-purpose committee must file a telegram report if it makes direct campaign expenditures supporting or opposing a single candidate that in the aggregate exceed \$1,000 or a group of candidates that in the aggregate exceed \$15,000 during the period for telegram reports.

(b) The period for telegram reports begins on the ninth day before election day and ends at noon on the second day before election day.

(c) A report under this section may be filed by telegram or telephonic facsimile machine or by hand.

(d) A report under this section must be filed with the commission not later than 48 hours after the expenditure is made.

(e) Section 20.23 of this title (relating to Timeliness of Action by Mail) does not apply to this section.

(f) The report does not have to be on a form issued by the commission.

(g) Reports required by this section need not include an affidavit.

(h) Contributions reported under this section must be reported again in the next applicable sworn report of contributions and expenditures.

*§20.437. Contents of Telegram Report.* A report required by §20.435 of this title (re-

lating to Telegram Reports by Certain General-Purpose Committees) shall include the following information:

(1) the full name of the general-purpose committee;

(2) the full name of the campaign treasurer;

(3) the amount of each direct campaign expenditure;

(4) the date of each direct campaign expenditure;

(5) a description of the goods or services for which each direct campaign expenditure was made; and

(6) the identification of the candidates or group of candidates benefiting from the direct campaign expenditure.

#### *§20.439. Dissolution Report.*

(a) The campaign treasurer of a general-purpose committee may file a dissolution report at any time that the committee expects no further reportable activity to occur.

(b) A dissolution report does not have to be filed by a designated deadline.

(c) Filing a dissolution report

(1) relieves the campaign treasurer of the duty to file additional reports under this subchapter; and

(2) terminates the general-purpose committee's campaign treasurer appointment.

#### *§20.441. Contents of Dissolution Report.* A dissolution report must contain.

(1) the information listed in §20.433 of this title (relating to Contents of General-Purpose Committee Sworn Report of Contributions and Expenditures); and

(2) the following sworn statement, signed by the general-purpose committee's campaign treasurer, and properly notarized: "I, the undersigned campaign treasurer, do not expect the occurrence of any further reportable activity by this general-purpose committee for this or any other campaign or election for which reporting under the Election Code is required. I declare that all of the information required to be reported by me has been reported. I understand that designating a report as a dissolution report terminates the appointment of campaign treasurer. I further understand the circumstances in which the general-purpose committee may not make or authorize political expenditures or accept political contributions without having an appointment of campaign treasurer on file."

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 18, 1993.

TRD-9333512

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

### Subchapter G. Rules Applicable to a Principal Political Committee of a Political Party

#### • 1 TAC §20.501, §20.503

The Texas Ethics Commission adopts new §20.501 and §20.503, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7046)

The new sections set forth the general rules concerning certain reports filed with the commission, reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee, rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations, rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No comments were received regarding adoption of the new sections

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate, adopt, and repeal rules concerning the filing of reports mandated by any statute administered or enforced by the commission

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 18, 1993.

TRD-9333511

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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Subchapter H. Rules Applicable to a Political Party Accepting Contributions from Corporations or Labor Organizations

- 1 TAC §§20.521, 20.523, 20.525, 20.527, 20.529, 20.531

The Texas Ethics Commission adopts new §§ 20.521, 20.523, 20.525, 20.527, 20.529, and 20.531, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. Section 20.521 and §20.531 are adopted without changes; §§20.523, 20.525, 20.527, and 20.529 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7046).

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

§20.523. *Separate Account Required.*

(a) Contributions authorized by §24.19 of this title (relating to Contribution to a Political Party) must be maintained in an account separate from other contributions accepted by a political party.

(b) Interest and other income earned from contributions authorized by §24.19 of this title (relating to Contribution to a Political Party) must be maintained in the account required by subsection (a) of this section.

(c) Proceeds from the sale or rent of assets purchased either with contributions authorized by §24.19 of this title (relating to Contribution to a Political Party) or with interest or other income earned from such contributions must be maintained in the account required by subsection

(a) of this section.

§20.525. *Record of Contributions and Expenditures and Contents of Report.*

(a) The party chair of a political party is required to maintain a record of all contributions from corporations and labor organizations and all expenditures from such contributions.

(b) The party chair of a political party shall preserve the record required by subsection (a) of this section for at least two years after the filing deadline for the report containing the information on the record.

(c) The party chair of a political party that accepts contributions authorized by §24.19 of this title (relating to Contribution to a Political Party) shall report all contributions and expenditures made to and from the account required by §20.523 of this title (relating to Separate Account Required), in accordance with the reporting schedule in §20.529 of this title (relating to Reporting Schedule for Political Party Accepting Corporate or Labor Organization Contributions).

(d) The reports required by subsection (c) of this section shall contain the following information for the period covered by the report:

- (1) the full name of the political party;
- (2) the complete mailing address of the political party;
- (3) the full name of the political party's chair;
- (4) the residence or business street address of the political party's chair;
- (5) if the mailing address of the political party's chair is different from the street address provided, the mailing address for the political party's chair;
- (6) the political party chair's telephone number;
- (7) the identity and date of the election for which the report is filed, if applicable;

(8) for each corporation or labor organization from whom the political party accepted a contribution (other than a pledge, loan, or guarantee of a loan):

(A) the full name of the corporation or labor organization making the contribution;

(B) the address of the corporation or labor organization making the contribution;

(C) the amount of the contribution; and

(D) the date the contribution was accepted;

(E) a description of any kind contribution;

(9) for each corporation or labor organization from whom the political party accepted a pledge:

(A) the full name of the corporation or labor organization making the pledge;

(B) the address of the corporation or labor organization making the pledge;

(C) the amount of the pledge;

(D) the date the pledge was accepted; and

(E) a description of any goods or services pledged;

(10) for each corporation or labor organization making a loan or loans to the political party:

(A) the full name of the person or financial institution making the loan;

(B) the address of the person or financial institution making the loan;

(C) the amount of the loan;

(D) the date of the loan;

(E) the interest rate;

(F) the maturity date;

(G) the collateral for the loan, if any;

(H) if the loan has guarantors:

(i) the full name of each guarantor;

(ii) the address of each guarantor;

(iii) the principal occupation of each guarantor;

(iv) the name of the employer of each guarantor; and

(v) the amount guaranteed by each guarantor;

(11) for each expenditure made by the political party from the account required by §20.523 of this title (relating to Separate Account Required):

(A) the date of the expenditure;

(B) the full name of the person to whom each expenditure was made;

(C) the address of the person to whom each expenditure was made;

(D) the purpose of the expenditure, for example, the nature of the goods or services for which the expenditure was made; and

(E) the amount of the expenditure;

(12) for each expenditure by the political party that was made as a political contribution to a candidate, officeholder, or another political committee and that was returned to the political party during the reporting period:

(A) the amount returned;

(B) the full name of the person to whom the expenditure was originally made;

(C) the address of the person to whom the expenditure was originally made; and

(D) the date the expenditure was returned to the general-purpose committee;

(13) the following total amounts:

(A) total amount of all contributions (other than pledges, loans, or guarantees of loans) accepted during the period from corporations or labor organizations;

(B) the total amount of all expenditures made during the period from

the account required by §20.523 of this title (relating to Separate Account Required);

(14) if applicable, a statement that no reportable activity occurred during the reporting period; and

(15) an affidavit, executed by the political party's chair, stating: "I swear, or affirm, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code."

*§20.527. Form of Report.*

(a) The report required by this subchapter is separate from any other report a political party is required to file under this title.

(b) The report is filed by the chair of the state party or county executive committee, as applicable, and not by the treasurer of a general-purpose committee. Contributions and expenditures required to be reported under this subchapter should not be included on a report filed in accordance with Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee).

*§20.529. Reporting Schedule for Political Party Accepting Corporate or Labor Organization Contributions.* A political party that has accepted a contribution from a corporation or labor organization shall file the following reports until the political party is no longer accepting corporate or labor organization contributions and the acceptance and expenditure of all such funds has been reported:

(1) A report shall be filed not earlier than July 1 and not later than July 15, covering the period that begins on either January 1 or the day after the last day included in a primary election report filed under paragraph (3) of this section, as applicable, and ends on June 30.

(2) A report shall be filed not earlier than January 1 and not later than January 15, covering the period that begins on either July 1 or the day after the last day included in a general-election report filed under paragraph (4) of this section, as applicable, and ends on December 31;

(3) A report shall be filed for each primary election held by the political party. The report shall be filed not later than the eighth day before the primary election, covering the period that begins on January 1 and ends on the tenth day before the primary election;

(4) A report shall be filed for the general election for state and county officers. The report shall be filed not later than the 50th day before the general election, covering the period that begins on July

1 and ends on the 61st day before the general election for state and county officers.

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

◆ ◆ ◆  
**Subchapter I. Rules Applicable to a Political Party's County Executive Committee**

- 1 TAC §§20.551, 20.553, 20.555, 20.557, 20.559, 20.561

The Texas Ethics Commission adopts new §§20.551, 20.553, 20.555, 20.557, 20.559, and 20.561, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. Section 20.551 and §20.559 are adopted without changes; §§20.553, 20.555, 20.557, and 20.561 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7048).

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

§20.555. *County Executive Committee Accepting Contributions or Making Expenditures That Exceed \$5,000.*

(a) A county executive committee described by subsection (b) of this section is subject to the requirements of Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee), except where those rules conflict with this subchapter. In the case of conflict, this subchapter prevails over Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee).

(b) A county executive committee that accepts political contributions or that makes political expenditures that, in the aggregate, exceed \$5,000 in a calendar year shall file:

(1) a campaign treasurer appointment with the commission no later than the 15th day after the date that amount is exceeded; and

(2) the reports required by Subchapter F of this chapter (relating to Reporting Requirements for a General-Purpose Committee). The first report filed must include all political contributions accepted and all political expenditures made before the county executive committee filed its campaign treasurer appointment.

(c) Contributions accepted from corporations and labor organizations under §24.19 of this title (relating to Contributions to a Political Party) and reported under Subchapter H of this chapter (relating to Accepting and Reporting Contributions from Corporations and Labor Organizations) do not count against the \$5,000 thresholds described in subsection (b) of this section

(d) A county executive committee that filed a campaign treasurer appointment and reports of contributions and expenditures may file the report due by January 15 as its final report. Filing such a report will notify the filing authority that the county executive committee does not intend to file reports in the next calendar year unless it exceeds one of the \$5,000 thresholds.

§20.557. *Exceptions from Certain Restrictions.* A county executive committee is exempted from complying with §20.401(a)-(c) of this title (relating to Thresholds for Appointment of Campaign Treasurer by a General-Purpose Committee).

§20.561. *County Executive Committee Accepting Contributions From Corporations and or Labor Organizations.*

(a) A county executive committee that accepts contributions from corporations or labor organizations authorized by § 24.19 of this title (relating to Contribution to a

Political Party) is subject to the provisions set out in Subchapter H of this chapter (relating to Rules Applicable to a Political Party Accepting Contributions from Corporations or Labor Organizations).

(b) The chair of a county executive committee that accepts contributions from a corporation or labor organization must file the report required by § 20.525 of this title (relating to Record of Contributions and Expenditures).

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

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**Subchapter J. Reports by a  
Candidate for State Party  
Chair**

• **1 TAC §§20.571, 20.573, 20.575,  
20.577**

The Texas Ethics Commission adopts new §§20.571, 20.573, 20.575, and 20.577, concerning the reporting of political contributions and expenditures by certain candidates, officeholders, and political committees. Sections 20.571, 20.573, and 20.575 are adopted without changes; §20.577 is adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7049). The changes are non-substantive and are grammatical or stylistic in nature.

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations, rules concerning a political party's county executive committee; reports by a candidate for state party chair, and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections will set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

§20.577. *Reporting Schedule for a Candidate for State Chair.*

(a) A candidate for state chair of a political party is required to file only the reports listed in this section and is not required to file any other reports required by candidates for public office under Subchapter C of this chapter (relating to Reporting Requirements for a Candidate).

(b) A candidate for state chair of a political party is required to file semiannual reports as provided by this subsection.

(1) One semiannual report is due no earlier than July 1 and no later than July 15.

(A) The period covered by a report under this paragraph begins on the later of the following dates, as applicable:

(i) January 1;

(ii) the first day after the period covered by the last report required by this subchapter; or

(iii) the day the state chair's campaign treasurer appointment was filed, if this is the first report filed under this subchapter.

(B) The period covered by the report under this paragraph ends on June 30

(2) One semiannual report is due no earlier than January 1 and no later than January 15.

(A) The period covered by a report under this paragraph begins on the later of the following dates, as applicable:

(i) July 1;

(ii) the first day after the period covered by the last report required by this subchapter, or

(iii) the day the state chair's campaign treasurer appointment was filed, if this is the first report filed under this subchapter

(c) A candidate for state chair of a political party shall also file the following reports:

(1) A candidate for state chair of a political party shall file a report not earlier than the 39th day before the convening of the state convention and not later than the

30th day before the convening of the state convention. The report shall cover the period that begins on either the day the candidate filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the 40th day before the convening; and

(2) A candidate for state chair of a political party shall file a report not earlier than the ninth day before the convening of the state convention and not later than the eighth day before the convening of the state convention. The report must cover the period that begins on either the day after the committee filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the tenth day before the convening.

(d) A candidate for state chair of a political party who expects no further reportable activity in connection with his or her candidacy may file a final report at any time in accordance with §20.229 of this title (relating to Final Report) and §20.231 of this title (relating to Contents of Final Report).

(e) A former candidate for state chair of a political party who retains unexpended political contributions, unexpended interest or other income from political contributions, or assets purchased with political contributions at the time of filing a final report is subject to the requirements of §§20.233-20.243 of this title (relating to Reporting Requirements for a Candidate).

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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**Subchapter K. Reports by Political Committees Supporting or Opposing a Candidate for State Chair of a Political Party**

◆ ◆ ◆  
**• 1 TAC §§20.591, 20.593, 20.595**

The Texas Ethics Commission adopts new §§20.591, 20.593, and 20.595, concerning the reporting of political contributions and ex-

penditures by certain candidates, officeholders, and political committees. Section 20.591 and §20.593 are adopted without changes; §20.595 is adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7050).

The new sections set forth the general rules concerning certain reports filed with the commission; reporting requirements of a candidate, an officeholder without a campaign treasurer appointment on file, a specific-purpose political committee, and a general-purpose political committee; rules applicable to a principal political committee of a political party; general rules concerning political parties accepting contributions from corporations and labor organizations; rules concerning a political party's county executive committee; reports by a candidate for state party chair; and reports by political committees supporting or opposing a candidate for state chair of a political party.

The new sections will set forth basic guidelines and requirements for the reporting, filing, and orderly processing and administration of reports filed with the Texas Ethics Commission and other filing authorities under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

*§20.595. Reporting Schedule for a Political Committee Supporting or Opposing Candidate for State Chair of a Political Party.*

(a) A political committee supporting or opposing a candidate for state chair of a political party is required to file semi-annual reports in accordance with this section:

(1) One semiannual report is due no earlier than July 1 and no later than July 15.

(A) The period covered by a report under this paragraph begins on the later of the following dates, as applicable:

- (i) January 1;
- (ii) the first day after the period covered by the last report required by this subchapter; or
- (iii) the day the political committee's campaign treasurer appointment was filed, if this is the first report filed under this subchapter.

(B) The period covered by the report under this subparagraph ends on June 30.

(2) One semiannual report is due no earlier than January 1 and no later than January 15.

(A) The period covered by a report under this paragraph begins on the later of the following dates, as applicable:

- (i) July 1;
- (ii) the first day after the period covered by the last report required by this subchapter; or
- (iii) The day the political committee's campaign treasurer appointment was filed, if this is the first report filed under this subchapter.

(B) The period covered by the report under this subparagraph ends on December 31.

(b) A political committee supporting or opposing a candidate for state chair of a political party shall also file the following reports:

(1) A political committee supporting or opposing a candidate for state chair of a political party shall file a report not earlier than the 39th day before the convening of the state convention and not later than the 30th day before the convening of the state convention. The report shall cover the period that begins on either the day the political committee filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the 40th day before the convening; and

(2) A political committee supporting or opposing a candidate for state chair of a political party shall file a report not earlier than the ninth day before the convening of the state convention and not later than the eighth day before the convening of the state convention. The report covers the period that begins on either the date the political committee filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the tenth day before the convening.

(c) A political committee supporting or opposing a candidate for state chair of a political party may file a dissolution report in accordance with §20.341 of this title (relating to Dissolution Report) and §20.343 of the chapter (relating to Contents of Dissolution Report) at any time that the committee expects no further reportable activity to occur).

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 22. Restrictions on Contributions and Expenditures

- 1 TAC §§22.1, 22.3, 22.5, 22.7, 22.9, 22.11, 22.13, 22.15, 22.17, 22.19, 22.21, 22.23, 22.25, 22.27, 22.29, 22.31

The Texas Ethics Commission adopts new §§22.1, 22.3, 22.5; 22.7, 22.9, 22.11, 22.13, 22.15, 22.17, 22.19, 22.21, 22.23, 22.25, 22.27, 22.29, and 22.31, concerning general restrictions on political contributions and expenditures. Sections 22.1, 22.3, 22.7, 22.9, 22.11, 22.13, 22.15, 22.17, 22.21, 22.23, 22.25, 22.27, 22.29, and 22.31, are adopted without changes; and §§22.5, 22.7, and 22.19 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7051). The changes are minor and non-substantive, and are designed to clarify and correct text.

The new sections set forth certain restrictions on contributions and expenditures: they set forth the requirements of appointing the campaign treasurer prior to political activity; provide guidelines on disclosure of true sources of contributions and expenditures direct campaign contributions, contributions from out-of-state committees, and cash contributions; prohibit certain contributions during the regular session of the legislature, contributions in the capitol, payments to purchase real property, the personal use of contributions, and the acceptance of contributions from foreign nationals; and set forth restrictions on reimbursement of personal funds, and payments on certain loans. Additionally, the new sections provide time limits on retaining unexpended contributions, and provide guidelines on activity after the death or incapacity of a candidate or officeholder.

The new sections will set forth basic guidelines and requirements, including prohibitions and restrictions, for candidates and officeholders seeking political contributions and making political expenditures. They are designed to inform the general public, out-of-state political committees, and any other interested party about the restrictions and prohibitions in the use of contributions and expenditures under the Texas Election Code, Title 15.

No public comments were received adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571,

which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

### §22.5. Direct Campaign Expenditures.

(a) Only the following persons, complying with applicable restrictions and procedures, may make or authorize a direct campaign expenditure:

(1) an individual making an expenditure authorized by subsection (b) or (d) of this section;

(2) a corporation or labor organization making an expenditure authorized by subsection (e) of this section;

(3) a candidate making or authorizing an expenditure for the candidate's own election;

(4) a political committee; or

(5) a campaign treasurer or assistant campaign treasurer acting in an official capacity.

(b) An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from his or her own property if:

(1) the total expenditures on any one or more candidates or measures do not exceed \$100 and the individual receives no reimbursement for the expenditures; or

(2) if the total expenditures on any one or more candidates or measures exceed \$100, the individual complies with Chapter 20, Subchapter E, of this title (relating to Reporting Requirements for a Specific-Purpose Committee) as if the individual were a campaign treasurer of a political committee and the individual receives no reimbursement for the expenditures.

(c) An individual making expenditures under subsection (b)(2) of this section is not required to file a campaign treasurer appointment, but is required to use the reporting forms and schedule prescribed by Chapter 20, Subchapter E, of this title (relating to Reporting Requirements for a Specific-Purpose Committee).

(d) An individual making a direct campaign expenditure consisting of the individual's personal travel expenses is not required to comply with subsection (b)(2) of this section, provided that the individual receives no reimbursement for the expenditures.

(e) A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation makes the expenditures in

accordance with subsections (b) and (c) of this section as if the corporation or labor organization were an individual.

### §22.7. Contribution from Out-of-State Committee.

(a) For each reporting period during which a candidate, officeholder, or political committee accepts a contribution or contributions from an out-of-state political committee totaling more than \$500, the candidate, officeholder, or political committee must comply with subsections (b) and (c) of this section.

(b) The candidate, officeholder, or political committee covered by subsection (a) of this section must first obtain from the out-of-state committee one of the following documents before accepting the contribution that causes the total received from the out-of-state committee to exceed \$500 during the reporting period:

(1) a written statement, certified by an officer of the out-of-state political committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state political committee during the 12 months immediately preceding the contribution; or

(2) a copy of the out-of-state political committee's statement of organization filed as required by law with the Federal Election Commission and certified by the Federal Election Commission.

(c) The document obtained pursuant to subsection (b) of this section shall be included as part of the report that covers the reporting period in which the candidate, officeholder, or political committee accepted the contribution that caused the total accepted from the out-of-state committee to exceed \$500.

(d) A candidate, officeholder, or political committee that:

(1) receives contributions covered by subsection (a) of this section from the same out-of-state committee in successive reporting periods, and

(2) complies with subsection (b)(2) of this section before accepting the first contribution triggering subsection (a) of this section, may comply with subsection (c) of this section in successive reporting periods by submitting a copy of the certified document obtained before accepting the first contribution triggering subsection (a) of this section, rather than by obtaining and submitting an original certified document for each reporting period, provided the document has not been amended since the last submission.

(e) A candidate, officeholder, or political committee that accepts a contribution or contributions totaling \$500 or less



from an out-of-state political committee shall include as part of the report covering the reporting period in which the contribution or contributions are accepted either:

(1) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by the Federal Election Commission; or

(2) the following information:

(A) the full name of the committee, and, if the name is an acronym, the words the acronym represents;

(B) the address of the committee;

(C) the telephone number of the committee;

(D) the name of the person appointing the campaign treasurer; and

(E) the following information for the individual appointed campaign treasurer and assistant campaign treasurer:

(i) the individual's full name;

(ii) the individual's residence or business street address; and

(iii) the individual's telephone number.

(f) This section does not apply to a contribution from an out-of-state political committee if the committee filed a campaign treasurer appointment with the commission before making the contribution.

#### **§22.19. General Restrictions on Reimbursement of Personal Funds.**

(a) If a candidate makes political expenditures from the candidate's personal funds, he or she may reimburse those personal funds from political contributions only if the expenditure is reported and the candidate states his or her intent to reimburse personal funds pursuant to §20.219(16) of this title (relating to Content of Candidate's Sworn report of Contributions and Expenditures).

(b) If an officeholder who does not have a campaign treasurer appointment on file makes political expenditures from the officeholder's personal funds, he or she may reimburse those personal funds from political contributions only if the expenditure is reported and the officeholder states his or her intent to reimburse personal funds pursuant to §20.279(12) of this title (relating to Contents of Officeholder's Sworn Report of Contributions and Expenditures).

(c) A candidate or officeholder may reimburse personal funds from political contributions for the use of personal assets for political purposes provided that the reimbursement is reported as a political expenditure. Reimbursement of personal funds from political contributions for the use of a personal vehicle for political purposes must be at the rate set in accordance with the IRS standard mileage rate for business use of a vehicle.

(d) A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if:

(1) the expenditures were fully reported as political expenditures on the report covering the period during which the expenditures were made; and

(2) the report disclosing the expenditures indicates that the expenditures were made from the candidate's or officeholder's personal funds and are subject to reimbursement.

(e) A candidate's or officeholder's failure to comply with subsection (d) of this section may not be cured by filing a corrected report after the report deadline has passed.

(f) A candidate or officeholder who has complied with subsection (d) of this section and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made.

(g) Section 22.21 of this title (relating to Additional Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans) sets limits on the amount of political expenditures from personal funds that a statewide officeholder may reimburse from political contributions.

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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Jim Mathieson  
Assistant General Counsel  
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## Chapter 24. Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations

• 1 TAC §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, 24.19

The Texas Ethics Commission adopts new §§24.1, 24.3, 24.5, 24.7, 24.9, 24.11, 24.13, 24.15, 24.17, and 24.19, concerning general restrictions on political contributions and expenditures made by corporations and labor organizations. Sections 24.5, 24.7, 24.9, 24.11, 24.13, and 24.17 are adopted without changes; and §§24.1, 24.3, 24.15, and 24.17 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7055). The changes are non-substantive

The new sections set forth certain restrictions on contributions and expenditures applicable to corporations, labor organizations, and certain associations: they prohibit certain corporate loans, contributions, and expenditures, authorize certain contributions on measures and communications to certain persons; and allow expenditures to a general-purpose committee, get-out-the-vote campaign, and to political committees.

The new sections will set forth basic guidelines and requirements, including prohibitions and restrictions, to be followed by corporations, labor organizations, and other associations when making political contributions or expenditures under the Texas Election Code, Title 15.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

### *§24.1. Corporations and Certain Associations Covered.*

(a) This chapter applies to:

(1) labor organizations;

(2) corporations that are organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, federal law, or the laws of another state or nation; and

(3) the following associations, whether incorporated or not, which for purposes of this chapter are considered to be corporations covered by this chapter:

(A) banks;

- (B) trust companies;
- (C) savings and loan associations or companies;
- (D) insurance companies;
- (E) reciprocal or interinsurance exchanges;
- (F) railroad companies;
- (G) cemetery companies;
- (H) government-regulated cooperatives;
- (I) stock companies; and
- (J) abstract and title insurance companies.

(b) For purposes of this chapter, members of a corporation that does not have stockholders and members of an association listed in subsection (a)(3) of this section are considered to be stockholders.

(c) This chapter does not apply to a political committee that incorporates for liability purposes only in accordance with subsection (d) of this section, provided that the sole principal purpose of the committee is accepting political contributions and making political expenditures.

(d) A political committee may incorporate to limit its liability by providing in its official incorporation documents that it is a political committee that is incorporating for liability purposes only, and that its only principal purpose is to accept political contributions and make political expenditures.

**§24.3. Prohibitions on Contributions and Expenditures.**

(a) A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this chapter.

(b) A corporation or labor organization may not make a political contribution or political expenditure in connection with a recall election or in connection with the circulation or submission of a petition to call a recall election.

**§24.15. Payments to a Corporation of the Candidate or Officeholder.**

(a) If a corporation charges a candidate, officeholder, or specific-purpose committee for supporting or assisting a candidate or officeholder less than fair mar-

ket value for goods or services in order to comply with §32.23(b) of this title (relating to Restrictions on Payments to Certain Businesses), the discount is not a prohibited corporate contribution.

(b) If the discount is greater than is necessary to comply with §32.23 of this title (relating to Restrictions on Payments to Certain Businesses), the discount is a prohibited corporate contribution if the discount is not otherwise authorized by this chapter.

**§24.17. Corporate Expenditures for Get-Out-The-Vote Campaigns Permitted.**

(a) An expenditure to finance a voter registration or get-out-the-vote drive is not a political expenditure if the drive encourages voting in general but does not encourage voting for or against a measure, candidate, officeholder, or political party.

(b) A corporation or labor organization is permitted to make an expenditure described in subsection (a) of this section.

(c) A corporate or labor organization expenditure described by subsection (a) of this section is not reportable.

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 26. Political and Legislative Advertising**

- 1 TAC §§26.1, 26.3, 26.5, 26.7, 26.9, 26.11, 26.13, 26.15, 26.17

The Texas Ethics Commission adopts new §§26.1, 26.3, 26.5, 26.7, 26.9, 26.11, 26.13, 26.15, and 26.17, concerning restrictions and requirements on political and legislative advertising. Sections 26.1, 26.3, 26.7, 26.9, 26.11, 26.15, and 26.17 are adopted without changes; §26.5 and §26.13 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7056). The changes are non-substantive. In §26.13(c), the term "Great Seal of Texas" was replaced by the term "state seal" pursuant to a comment received by the commission.

The new sections set forth certain guidelines, requirements, and restrictions on political advertising; political advertising is defined; requirements and exceptions for political

disclosure are set forth; notice requirements for political advertising designed to be seen from a road are set out; maximum rates for political advertising are set forth; and prohibitions against the misuse of an office title, including the use of the state seal, are set out.

The new sections will set forth basic guidelines and requirements, including prohibitions and restrictions, to be followed by all persons when involved in political advertising under the Texas Election Code, Title 15.

Public comments were received on §26.13(c). It was suggested that the term "state seal" be substituted in place of "Great Seal of Texas." The commission agreed with the comment and §26.13(c) is adopted with that change. No other comments were received.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

**§26.5. Disclosure Not Required for Certain Campaign Materials.**

The requirements of §26.3 of this chapter (relating to Required Disclosure on Political Advertising) do not apply to the following:

- (1) a ticket or invitation to a political fund-raising event;
- (2) political advertising printed on letterhead stationery, if the letterhead contains the information required by §26.3(a)(2) and (3) of this title (relating to Required Disclosure on Political Advertising); or
- (3) political advertising on campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impracticable.

**§26.13. Misleading Use of Office Title.**

(a) A person may not knowingly enter into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office he or she does not hold at the time the agreement is made.

(b) A person may not knowingly represent in a campaign communication that a candidate holds a public office he or she does not hold at the time the representation is made.

(c) A person other than an officeholder may not knowingly use a representation of the state seal in political advertising. "State seal" means the state seal, the reverse of the state seal, and the state arms as defined by Texas Civil Statutes, Article 6139f.

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 18, 1993.

TRD-9333534 Jim Mathieson  
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Texas Ethics Commission

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

## Chapter 28. Reports by a Candidate for Speaker of the House of Representatives

### • 1 TAC §§28.1, 28.3, 28.5, 28.7, 28.9

The Texas Ethics Commission adopts the new §§28.1, 28.3, 28.5, 28.7, and 28.9, concerning the reporting and filing of reports by candidates for speaker of the house of representatives. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7058).

The new sections set forth definitions, guidelines, requirements, and restrictions on contributions and expenditures applicable to reports filed by candidates for speaker of the house of representatives.

The new sections will provide guidelines, including prohibitions and restrictions, to be followed by candidates in the preparation and filing of reports for speaker of the house of representatives under the Government Code, Chapter 302.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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-9333533 Jim Mathieson  
Assistant General Counsel  
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For further information, please call: (512) 463-5800

## Chapter 30. Lobbyist Registration

### Subchapter A. General Provisions

#### • 1 TAC §§30.1, 30.3, 30.5

The Texas Ethics Commission adopts new §§30.1, 30.3, and 30.5, concerning the registration and reporting requirements of lobbyists. The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. Section 30.1 and §30.5 are adopted without changes; §30.3 is adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7058). The changes are non-substantive: in §30.3(1) and (2), the word "chapter" has been substituted for the word "title".

The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. They set forth definitions; compensation and expenditure thresholds; registration procedures and requirements; and exclusions and exceptions to lobby registration.

The new sections set forth basic guidelines and criteria to be followed by any person who should register as a lobbyist under the Texas Government Code, Chapter 305.

Comments were received on §30.1, concerning how the rule might relate to the legality of a sales commission paid to an employee or contractor who communicates with a state agency in order to influence the agency's selection of a service provider. The person commenting on the proposed rule suggested that the rules should be clarified to provide that purchasing decisions are not administrative actions for purposes of the contingent fee prohibition set forth in the Government Code, §305.022 (relating to Contingent Fees).

The commission notes that the relationship of the laws that regulate lobby activities and laws that regulate the purchasing decisions of state agencies has been a matter of continuing concern to the commission, as evidenced by advisory opinions and previous rule-making that specifically addressed aspects of this issue. The proposed rule carries forward, without significant change, a revised rule previously adopted by commission after it had focused on issues concerning lobbying on purchasing decisions. The commission agreed further rule-making, advisory opinions, or both, may be necessary and appropriate to address concerns about contingent fees paid for purchasing decisions, but was not prepared to make the suggested changes to language in the proposed rules without further study and consideration of the full effect of those changes.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

**§30.3. Registration Required.** A person must register and otherwise comply with the requirements of this chapter if the person lobbies and either:

(1) is compensated or reimbursed by another person, including a full-time employer, to lobby, as set forth in Subchapter B of this chapter (relating to Compensated Lobbying); or

(2) makes certain specified expenditures to lobby, as set forth in Subchapter C of this chapter (relating to Expenditures Made to Lobby).

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 30. Personal Financial Disclosure

### Subchapter A. Disclosure Statements

#### Expenditures Previously Reported

##### • 1 TAC §30.3

The Texas Ethics Commission adopts the repeal of §30.3, concerning expenditures previously reported under other statutory provisions. The repeal is adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7059).

The repealed section is being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No public comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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463-5800

## Subchapter B. Compensated Lobbying

- 1 TAC §§30.11, 30.13, 30.15,  
30.17, 30.19

The Texas Ethics Commission adopts new §§30.11, 30.13, 30.15, 30.17, and 30.19, concerning the registration and reporting requirements of lobbyists. The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. Sections 30.11, 30.13, 30.15, and 30.19 are adopted without changes; §30.17 is adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7060). The changes are non-substantive: the phrase "compensates, or retains" is added to subsection (a), and the word "each" is substituted for the word "a" in §30.17(c)(1).

The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. They set forth definitions; compensation and expenditure thresholds; registration procedures and requirements; and exclusions and exceptions to lobby registration.

The new sections set forth basic guidelines and criteria to be followed by any person who should register as a lobbyist under the Texas Government Code, Chapter 305.

Comments were received on §30.19. The first comment concerned how the rule might relate to the legality of a sales commission paid to an employee or contractor who communicates with a state agency in order to influence the agency's selection of a service provider. The person commenting on the proposed rule suggested that the rules should be clarified to provide that purchasing decisions are not administrative actions for purposes of the contingent fee prohibition set forth in the Government Code, §305.022.

The second comment suggested that the exclusion in §30.19(a)(1) be amended to include any request, written or oral, for an interpretation of an agency rule or policy.

The Consulting Engineers Council of Texas commented against §30.19(a)(1).

With respect to the first comment, the commission notes that the relationship of the laws that regulate lobby activities and laws that regulate the purchasing decisions of state agencies has been a matter of continuing concern to the commission, as evidenced by advisory opinions and previous rule-making that specifically addressed aspects of this issue. The proposed rule carries forward, without significant change, a revised rule previously adopted by commission after it had

focused on issues concerning lobbying on purchasing decisions. The commission agreed further rule-making, advisory opinions, or both, may be necessary and appropriate to address concerns about contingent fees paid for purchasing decisions, but was not prepared to make the suggested changes to language in the proposed rules without further study and consideration of the full effect of those changes.

With respect to the second comment, the commission believes that it is the better public policy to limit this exclusion from the lobbying registration requirements to those instances where a person seeks a written opinion from the state agency. By so limiting the exclusion, the rules ensure that there is at least some document to evidence the communication between the person making the request and the agency responding to the request. Also, the commission believes the concerns voiced in the comment may be adequately addressed by one or more of the other exclusions from lobby registration requirements adopted in §30.19 (relating to Exclusions from the Compensation Threshold).

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

### §30.17. Registration by a Compensated Lobbying Entity.

(a) For purposes of this section, a "lobbying entity" is a corporation, association, firm, partnership, committee, club, organization, or group of persons voluntarily acting in concert that is compensated or reimbursed to lobby and that employs, retains, compensates, or reimburses one or more persons to lobby.

(b) It is the intent of the commission that the public have full disclosure of the items required to be reported under this chapter and Chapter 32 of this title (relating to Activity Reporting by a Registrant).

(c) There are two options for reporting:

(1) The lobbying entity elects to register, and reports the total compensation or reimbursement paid by each client for lobbying. With respect to compensation, each individual registrant employed, retained, compensated, or reimbursed by the lobbying entity is then required to report only the compensation or reimbursement paid to the individual registrant.

(2) If the lobbying entity declines to register, each individual registrant who is employed, retained, compensated, or reimbursed by the lobbying entity, and with the full cooperation of the lobbying entity, reports either:

(A) the total compensation or reimbursement paid by a client to the lobbying entity for lobbying by all registrants; or

(B) the compensation or reimbursement paid by a client to the lobbying entity for lobbying by the individual registrant.

(d) If the total amount of compensation and reimbursement to lobby received by the lobbying entity is not reported under subsection (c)(2) of this section, the lobbying entity shall register under §30.3 of this title (relating to Registration Required).

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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463-5800

## Subchapter C. Expenditures to Lobby

- 1 TAC §§30.31, 30.33, 30.35,  
30.37, 30.39, 30.41

The Texas Ethics Commission adopts new §§30.31, 30.33, 30.35, 30.37, 30.39, and 30.41, concerning the registration and reporting requirements of lobbyists. The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. Sections 30.31, 30.35, 30.39, and 30.41 are adopted without changes; §30.33 and §30.37 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register*, (18 TexReg 7061). New subsection (c) has been added to §30.33, and minor changes, not substantive in nature were made to §30.37.

The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. They set forth definitions; compensation and expenditure thresholds; registration procedures and requirements; and exclusions and exceptions to lobby registration.

The new sections set forth basic guidelines and criteria to be followed by any person who should register as a lobbyist under the Texas Government Code, Chapter 305.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission

with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

### §30.33. Lobby Expenditure.

(a) An expenditure is a lobby expenditure if the expenditure is made to lobby, and is for one or more of the following purposes:

- (1) food, beverages, or both;
- (2) transportation, lodging, or both;
- (3) entertainment;
- (4) a gift, other than an award or memento;
- (5) an award or memento; or
- (6) an expenditure made for the attendance of a member at a political fundraiser or charity event.

(b) An expenditure for a person's own transportation, food and beverages, or lodging shall not be included in calculating the registration threshold under §30.31 of this title (relating to Expenditure Threshold).

(c) An expenditure of less than \$200 that is reimbursed by the member for whom the expenditure is made is not a lobby expenditure. For this provision to apply, however, the person who makes the expenditure must be fully reimbursed by the member before the date that such expenditure must otherwise be reported under Chapter 32 of this title (relating to Activity Reporting by a Lobbyist).

### §30.37. Lobbying Entity that Makes Lobby Expenditures.

(a) For purposes of this section, a "lobbying entity" is a corporation, association, firm, partnership, committee, club, organization, or group of persons voluntarily acting in concert that makes lobby expenditures.

(b) It is the intent of the commission that the public have full disclosure of the items required to be reported under this chapter and Chapter 32 of this title (relating to Activity Reporting by a Registrant).

(c) If a lobbying entity makes lobby expenditures that exceed the expenditure threshold, the expenditures must be reported by at least one of the persons eligible to report the lobby expenditure under this section.

(d) There are two options for reporting:

- (1) The lobbying entity elects to register, and reports the lobby expenditures

made by the entity. Each individual registrant, if any, employed by the lobbying entity is required to report only the lobby expenditures made by the individual.

(2) If the lobbying entity declines to register, a person who is registered under this chapter, as an agent of the lobbying entity and in cooperation with the lobbying entity, reports either:

(A) the total lobby expenditures made by the lobbying entity; or

(B) the lobby expenditures made by the lobbying entity that were effected by the individual registrant.

(e) For an individual to report a lobby expenditure on behalf of a lobbying entity under subsection (d)(2)(A) of this section, that individual must be present for the lobby expenditure.

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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## Subchapter D. Registration Procedures and Requirements

- 1 TAC §§30.51, 30.53, 30.55, 30.57, 30.59, 30.61, 30.63, 30.65, 30.67

The Texas Ethics Commission adopts new §§30.51, 30.53, 30.55, 30.57, 30.59, 30.61, 30.63, 30.65, and 30.67, concerning the registration and reporting requirements of lobbyists. The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. Sections 30.51, 30.53, 30.57, 30.63, 30.65, and 30.67 are adopted without changes; and §30.55, 30.59, and 30.61 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7062).

The changes are minor, not substantive in nature, and were made in order to clarify or correct text.

The new sections set forth the procedures and requirements for registration by those certain persons required to register as lobbyists. They set forth definitions; compensation and expenditure thresholds; registration procedures and requirements; and exclusions and exceptions to lobby registration.

The new sections set forth basic guidelines and criteria to be followed by any person who should register as a lobbyist under the Texas Government Code, Chapter 305.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

### §30.55. Contents of Registration Form.

(a) A person registering under §30.51 of this title (relating to Registration Form) shall provide the following information on the registration form:

- (1) the registrant's full name;
- (2) the registrant's occupation;
- (3) the registrant's business address;
- (4) the registrant's mailing address, if different than the business address; and
- (5) the registrant's business telephone number.

(b) The registrant shall report the following information with respect to each employer of the registrant:

- (1) the employer's full name;
- (2) the employer's address;
- (3) the subject matter on which the registrant lobbies for the employer, unless the registrant certifies that all the subject matters on which the registrant lobbies are listed under subsection (c) of this section; and

(4) the compensation and reimbursement to lobby paid to the registrant by the employer, unless the registrant certifies that all such compensation from the employer is derived from compensation and reimbursement paid by clients listed under subsection (c) of this section and all such compensation and reimbursement is reported under that subsection.

(c) The registrant shall report the following information with respect to each client of the registrant:

- (1) the client's full name;
- (2) the client's address;
- (3) the subject matter on which the registrant lobbies for the client; and
- (4) the compensation and reimbursement to lobby paid by the client.

(d) If an employer or client of the registrant is a corporation whose shares are not publicly traded, including a non-profit

corporation, in addition to the information required under subsection (b) or (c) of this section for the corporation the registrant must report:

(1) number of shareholders in the corporation;

(2) name and address of each officer of the corporation;

(3) name and address of each member of the corporation's board of directors; and

(4) if the corporation has shares, the name of each person who owns at least 10% of the shares of the corporation.

(e) If an employer or client of the registrant is an unincorporated association, including a business, trade, or consumer interest association, in addition to the information required under subsection (b) or (c) of this section for the association the registrant must report:

(1) number of members in the association;

(2) the name of each person who determines the policy of the association relating to legislative or administrative action;

(3) a full description of the methods by which the association develops and makes decisions about positions on policy relating to legislative or administrative action; and

(4) a list of those persons, if any, who have made a grant or contribution to the association of more than \$250 per year, in addition to or instead of dues or fees.

(f) the information concerning any person employed or retained by the registrant or the registrant's employer to assist the registrant in lobbying, as provided in §30.57 of this title (relating to Persons Who Assist a Registrant).

(g) A registrant retained or employed by a lobbying entity shall report, as the agent of that lobbying entity, the information required under this section for each client who pays compensation or reimbursement to the lobbying entity as consideration for the registrant's lobbying on behalf of that client, whether the client may be characterized for any other purposes as a client of the registrant, a client of the lobbying entity, or otherwise.

#### §30.59. Reporting Compensation and Reimbursement.

(a) When this title requires a registrant to report compensation or reimbursement to lobby, the amount shall be reported by the following categories unless the registrant chooses to report the exact amount:

(1) less than \$10,000;

(2) at least \$10,000, but less than \$25,000;

(3) at least \$25,000, but less than \$50,000;

(4) at least \$50,000, but less than \$100,000;

(5) at least \$100,000, but less than \$150,000;

(6) at least \$150,000, but less than \$200,000; or

(7) \$200,000 or more.

(b) When a person is required by this title to report compensation received, the amount reported may be:

(1) compensation actually received during the period for which the compensation is reported; or

(2) compensation earned during the period for which the compensation is reported; or

(3) compensation that will be received or earned during the period for which the compensation is reported, under the terms of an agreement between the registrant and the person who compensates the registrant.

(c) An amount reported as compensation received under subsection (b)(3) of this section shall be identified on the report as compensation to be received or earned under the terms of an agreement between the registrant and the person who compensates the registrant.

(d) The registrant must amend any report where compensation reported under subsection (b)(3) of this section would be inaccurate if an amendment is not filed.

(e) Compensation reported shall include all compensation for lobbying, including both compensation for direct communication with a member and compensation for services necessary to prepare for that direct communication, if the compensation would not have been necessary but for the direct communication.

(f) Reimbursement received for the following office expenses is not required to be reported under this section:

(1) long-distance telephone charges;

(2) delivery charges;

(3) photocopy expense;

(4) fax expense;

(5) office supplies;

(6) postage;

(7) dues and subscriptions;

(8) transportation not involving direct contact; and

(9) secretarial or clerical time described under §30.19(a)(10) of this title (relating to Exclusions from the Compensation Threshold).

(g) Reimbursement received by a registrant for a lobby expenditure that the registrant reports under §32.5 of this title (relating to Monthly Activity Report), or that the registrant will report under §32.3 of this title (relating to Annual Activity Report), is not required to be reported under §30.63 of this title (relating to Amended Registration Form).

#### §30.61. Reporting Subject Matter.

(a) When this title requires a registrant to report the subject matter of the registrant's lobbying activities, the registrant shall describe the legislation or administrative action on which the registrant lobbies or intends to lobby by identifying the appropriate subject matter categories listed on the form or in instructions to the form.

(b) If known or reasonably available to the registrant at the time the report is filed, the registrant shall report the following information:

(1) the bill number of any legislation concerning subject matter described in subsection (a) of this section that was specifically discussed or identified in a conversation with, or letter to, a member;

(2) the docket number of any administrative action concerning a matter described in subsection (a) of this section, and the agency at which the administrative action is pending; and

(3) any other legislative or administrative designation of the legislation or administrative action that identifies the specific matter on which the registrant will lobby.

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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## Subchapter C. Rules Concerning Reports

- 1 TAC §§30.119, 30.121, 30.123, 30.127, 30.131, 30.133, 30.135, 30.137

The Texas Ethics Commission adopts the repeal of §§30.119, 30.121, 30.123, 30.127, 30.131, 30.133, 30.135, and 30.137, concerning late personal financial disclosure reports filed with the commission. The repealed sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7065).

The repealed sections are being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No public comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 32. Activity Reporting by a Lobbyist

### Subchapter A. Reports to be Filed

- 1 TAC §§32.1, 32.3, 32.5

The Texas Ethics Commission adopts new §§32.1, 32.3, and 32.5, concerning the filing of activity report by a lobbyist with the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7065).

The new sections set forth the procedures and requirements for filing activity reports by those certain persons registered as lobbyists. The sections provide information on the lobbyist's activity report, the annual activity report, and the monthly activity report, the contents of an activity report including the attribution and apportionment of expenditures and the time of reporting those expenditures; and detailed reporting.

The new sections set forth basic guidelines and criteria to be followed by any person who must file activity reports as a lobbyist under the Texas Government Code, Chapter 305.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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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### Subchapter B. General Information to be Reported

- 1 TAC §§32.21, 32.23, 32.25, 32.27, 32.29, 32.31

The Texas Ethics Commission adopts new §§32.21, 32.23, 32.25, 32.27, 32.29, and 32.31, concerning the filing of activity reports by a lobbyist with the commission. §§32.21, 32.27, 32.29, and 32.31 are adopted without changes; §§32.23, and 32.25 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7066). The changes are non-substantive and are designed to clarify and correct.

The new sections set forth the procedures and requirements for filing activity reports by those certain persons registered as lobbyists. The sections provide information on the lobbyist activity report, the annual activity report, and the monthly activity report, the contents of an activity report including the attribution and apportionment of expenditures and the time of reporting those expenditures, and detailed reporting.

The new sections set forth basic guidelines and criteria to be followed by any person who must file activity reports as a lobbyist under the Texas Government Code, Chapter 305.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

§32.23. *Attribution of Expenditures.* A lobby expenditure reported under §32.11

(c) of this title (relating to Contents of Lobbyist Activity Report) shall be attributed as follows:

(1) for a food or beverage expenditure, to the person who consumed the food or beverage;

(2) for a transportation or lodging expenditure, to the person for whom the expenditure was paid;

(3) for an entertainment expenditure, or for an expenditure for the attendance of a member at a political fundraiser or charity event, to the person for whom the admission or ticket or contribution was paid; or

(4) for a gift, award, or memento, to the person receiving the gift, award, or memento.

§32.25. *Apportionment of Expenditures.*

(a) If a registrant makes a lobby expenditure to lobby more than one member, and cannot reasonably determine the amount of that lobby expenditure to directly attribute to a member, the registrant shall apportion the expenditure according to the total number of persons to whom the expenditure could be attributed.

(b) The registrant shall provide a detailed report as required by Subchapter C of this chapter (relating to Detailed Information to be Reported) if a lobby expenditure apportioned under this section and attributed to a member must be reported under that section.

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 18, 1993.

TRD-9333527 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

### Subchapter C. Detailed Information to be Reported

- 1 TAC §§32.51, 32.53, 32.55, 32.57, 32.59, 32.61

The Texas Ethics Commission adopts new §§32.51, 32.53, 32.55, 32.57, 32.59, and 32.61, concerning the filing of activity reports by a lobbyist with the commission. Sections 32.53, 32.55, 32.57, 32.59, and 32.61 are adopted without changes, and §32.51 is

adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register*, (18 TexReg 7067). The word "the" is substituted for the word "all" in §32.51(b) (5). It is non-substantive and is designed to clarify.

The new sections of set forth the procedures and requirements for filing activity reports by those certain persons registered as lobbyists. The sections provide information on the lobbyist activity report, the annual activity report, and the monthly activity report; the contents of an activity report, including the attribution and apportionment of expenditures and the time of reporting those expenditures; and detailed reporting.

The new sections set forth basic guidelines and criteria to be followed by any person who must file activity reports as a lobbyist under the Texas Government Code, Chapter 305.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

#### §32.51. Detailed Reports for Transportation or Lodging.

(a) Detailed information must be reported by a registrant if the registrant makes lobby expenditures for transportation or lodging that are attributable to a member and exceed \$50 during a day.

(b) The information reported under this section shall include:

(1) the name of the member to whom the expenditure is attributed under § 32.23 of this title (relating to Attribution of Expenditures);

(2) the purpose of the transportation or lodging, including the name of the conference, seminar, or other event, if applicable;

(3) the dates on which the member used the transportation or lodging;

(4) the name of the carrier;

(5) identification of the departure and arrival cities; and

(6) the name and address of the hotel, motel, or other place where lodging was provided.

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 18, 1993.

TRD-9333526

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

## Chapter 34. Conduct of Lobbyists

### Subchapter A. Restrictions on Lobby Expenditures

#### • 1 TAC §§34.1, 34.3, 34.5, 34.7, 34.9, 34.11

The Texas Ethics Commission adopts new §§34.1, 34.3, 34.5, 34.9, 34.11, and 34.13, concerning the conduct of those certain persons registered as lobbyists with the commission. Section 34.1 and §34.11 are adopted with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register*, (18 TexReg 7069). Section 34.1(a)(3) has been changed to §34.1(b); subsections (b) and (c) are now subsection (c) and (d). Additionally, new language has been substituted in new §34.1(b). Section 34.11 was changed to correct a cross-reference. Sections 34.3, 34.5, 34.9, 34.11, and 34.13 are adopted without changes and will not be republished. Section 34.7 is being withdrawn.

The new sections set forth the restrictions on lobbying expenditures and prohibit certain conduct by lobbyists. They provide information and guidelines on expenditures, presence, gifts, and loans.

The new sections set forth basic guidelines and criteria to be followed by any person registered as a lobbyist under the Texas Government Code, Chapter 305.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

#### §34.1. Maximum Lobby Expenditures.

(a) During a calendar year, a registrant shall not make a lobby expenditure that by itself or in an aggregate amount exceeds \$500 for:

(1) entertainment attributable to a member; or

(2) a gift or gifts attributable to a member.

(b) A registrant shall not make a lobby expenditures for an award or memento attributable to a member that exceeds \$500.

(c) A registrant may make lobby expenditures in any amount for food and

beverages attributable to a member, a member's spouse, or a member's dependent child, or for the member to attend one or more political fundraiser or charity events.

(d) Subject to the restrictions imposed by §34.5 of this title (relating to Expenditures for Transportation and Lodging), a registrant may make lobby expenditures in any amount for transportation or lodging attributable to a member.

§34.11. Gifts to a Member by a Related Registrant. Neither §34.1 of this title (relating to Maximum Annual Lobby Expenditures) nor §34.9 of this title (relating to Gift of Cash or Negotiable Instrument) prohibits or restricts a gift to a member by a registrant who is related to that member within the second degree of affinity or consanguinity, as determined in accordance with the Government Code, Chapter 573, Subchapter B (relating to Relationships by Consanguinity or by Affinity).

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 18, 1993.

TRD-9333525

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

## Subchapter B. Prohibited Conduct

#### • 1 TAC §§34.31, 34.33, 34.35

The Texas Ethics Commission adopts new §§34.31, 34.33, and 34.35, concerning the conduct of those certain persons registered as lobbyists with the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7070).

The new sections set forth the restrictions on lobbying expenditures, and prohibit certain conduct by lobbyists, and provide information and guidelines on expenditures, presence, gifts, and loans.

The new sections set forth basic guidelines and criteria to be followed by any person registered as a lobbyist under the Texas Government Code, Chapter 305.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or



the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993.

TRD-9333524

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

## Chapter 40. Registration and Regulation of Lobbyists

- 1 TAC §§40.1, 40.3, 40.5, 40.7, 40.9, 40.11, 40.13, 40.15, 40.19, 40.21, 40.23, 40.25, 40.27, 40.31, 40.33, 40.119, 40.121, 40.123, 40.127, 40.131, 40.133, 40.135, 40.137

The Texas Ethics Commission adopts the repeal §§40.1, 40.3, 40.5, 40.7, 40.9, 40.11, 40.13, 40.15, 40.19, 40.21, 40.23, 40.25, 40.27, 40.31, 40.33, 40.119, 40.121, 40.123, 40.127, 40.131, 40.133, 40.135, and 40.137, concerning registration and regulation of lobbyists. The repealed sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7071).

The repealed sections are being replaced by a more comprehensive recodification of commission rules resulting in the assignment of chapter and section numbers to those sections being retained or replaced.

No public comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993.

TRD-9333545

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

## Chapter 40. Financial Disclosure for Public Officers

- 1 TAC §§40.1, 40.3

The Texas Ethics Commission adopts the new §40.1, and §40.3, concerning the form used by certain public officials in filing their financial disclosure statements with the commission. The new sections are adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7071).

The new sections adopt by reference the financial statement form prescribed by the commission, and provides an exception for reporting expenditures previously reported on that person's sworn of contributions and expenditures filed pursuant to the Election Code, Title 15.

The new sections provide the necessary forms and form revisions to be used by a person filing a report pursuant to the Texas Government Code, Chapter 572.

No public comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, Chapter 571 which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission.

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 18, 1993.

TRD-9333523

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

## Chapter 50. Legislative Salaries and Per Diem

- 1 TAC §50.1

The Texas Ethics Commission adopts new §50.1, concerning legislative salaries and legislative per diem. The new section is adopted without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7072).

The new section sets the legislative per diem at \$90.

This section fulfills the statutory requirement of setting the amount of per diem to be paid to each member of the legislature and the lieutenant governor.

No public comments were received regarding adoption of the new section

The new section is adopted under the Texas Government Code, Chapter 571, which provides the Texas Ethics Commission with the authority to promulgate and adopt rules concerning operations of the commission, or the filing of reports mandated by any statute administered or enforced by the commission. Additionally, the new section is adopted in compliance with Article III, §24 and §24a, and Article IV, §17, of the Texas Constitution, which provide the commission with the authority to set the per diem for members of the legislature and the lieutenant governor.

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 18, 1993.

TRD-9333522

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: December 31, 1993

Proposal publication date: October 15, 1993

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

## Part IV. Office of the Secretary of State

### Chapter 79. Corporations

#### General Information and Correspondence

- 1 TAC §79.13, §79.14

The Office of the Secretary of State adopts amendments to §79.13 and §79.14, with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8057). The changes to the proposed text consist solely of corrections to punctuation.

The amendments are necessary to implement legislative changes contained in House Bill 1494, 73rd Legislature, Regular Session (1993). That bill, effective January 1, 1994, added Article 10.07 to the Texas Non-Profit Corporation Act, enabling non-profit corporations to file documents with delayed effective dates.

The amendments will implement the provisions of Article 10.07 of the Texas Non-Profit Corporation Act which allow non-profit corporations to file documents with delayed effective dates.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6252-13, and the Government Code, §405.031, which give the Secretary of State the authority to adopt rules of practice reasonably necessary to carry out the ministerial duties of the office. The Texas Non-Profit Corporation Act, Article 1396-9.04, gives the Secretary of State the power and authority reasonably necessary to enable him to administer the Act efficiently and to perform the duties therein imposed upon him.

**§79.13. Determining the Date of the 90th Day After the Date of Filing.**

(a) Four purposes of filing documents which will become effective upon the occurrence of events or facts that may occur in the future pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Article 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07, the date of the 90th day after the date of filing shall be deemed to be 90 days after the document is delivered in person or placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may show by competent evidence that the actual date of posting was to the contrary.

(b) If a document submitted with a delayed effective condition pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Article 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 10.07, does not conform to law, it will be returned to sender. When the document is corrected and resubmitted, the date of the 90th day after the date of filing may be recalculated and restated in the document to be 90 days after the document is resubmitted by delivery in person or placement in the United States Post Office or in the hands of a common or contract carrier properly addressed to the Office of the Secretary of State. The postmark or receipt mark generated in connection with the resubmission (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the document may show by competent evidence that the actual date of posting of the resubmission was to the contrary. The secretary of state will refer to the contents of the document to determine the date of the 90th day from the date of filing or refiling.

(c) To calculate the date of the 90th day from the date of filing, refer to calendar days as set forth in §71.5 of this title (relating to times for taking action).

**§79.14. Statement Regarding Delayed Effective Condition.**

(a) Contents. Pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Article 2.12; the Texas Limited Liability

Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07, when a condition triggering the effectiveness of a document filing has been satisfied or waived, a statement regarding the delayed effective condition must be submitted to the secretary of state. Such statement must contain the following information:

- (1) the name of the business entity;
- (2) the charter or file number of the entity;
- (3) the document to which the statement applies;
- (4) the date of filing of the document to which the statement applies;
- (5) the date on which the condition was satisfied or waived; and
- (6) the signature required by the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Article 2.12; the Texas Limited Liability Company Act, Article 9.03; or the Texas Non-Profit Corporation Act, Article 1396-10.07

(b) Timeliness. Pursuant to the Texas Business Corporation Act, Article 10.03; the Texas Revised Limited Partnership Act, Article 2.12, the Texas Limited Liability Company Act, Article 9.03, or the Texas Non-Profit Corporation Act, Article 1396-10.07, the statement regarding the delayed effective condition should be filed in the Office of the Secretary of State by the date of the 90th day from the date of filing as defined in §79.13 of this title (relating to Determining the Date of the 90th Day After the Date of Filing). Statements regarding the delayed effective condition received after the date of the 90th day from the date of filing will be filed for record; however, the secretary of state will not determine substantial compliance with the provisions of the statutes referenced in this section.

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 December 10, 1993.

TRD-9333501      Audrey Selden  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Effective date. January 1, 1994

Proposal publication date. November 9, 1993

For further information, please call. (512) 463-5701

## Part XV. Health and Human Services Commission

### Chapter 351. Coordinated Planning and Delivery of Health and Human Services

#### • 1 TAC §351.3

The Health and Human Services Commission (HHSC) adopts new §351.3, concerning the groups and committees that advise the commission, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8058).

The rule is required by Senate Bill 383, 72nd Texas Legislature.

The new rule's function is to describe the purpose, responsibilities, method of reporting to the commission, and duration of each advisory committee.

No comments were received regarding adoption of the new section.

The new rule is adopted under Texas Revised Civil Statutes, article 4413(502) §18, which give the commission authority to establish advisory committees, and Article 6252-33, which require an agency that is advised by advisory committees to describe in a rule the committees' purpose, tasks, reporting requirements, and duration.

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 December 10, 1993

TRD-9333480      Debby Gardner  
General Counsel  
Texas Health and Human  
Services Commission

Effective date: December 31, 1993

Proposal publication date. November 9, 1993

For further information, please call: (512) 502-3200

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 3. Boll Weevil Eradication Program

#### Subchapter A. Election Procedures

#### • 4 TAC §§3.1, 3.4-3.6

The Texas Department of Agriculture (the department) adopts amendments to §§3.1, 3.4, 3.5, and 3.6, concerning election procedures for the conducting of elections by the Boll Weevil Eradication Foundation, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8061). The amend-

ments are adopted to make the election process more efficient and increase the number of eligible voters.

The amendment to §3.1 changes the definition of eligible voter to make that definition consistent with that used in the industry and in implementation of federal cotton programs. An amendment to §3.4 corrects a citation error. An amendment to §3.5 clarifies who is to be represented on the committee canvassing votes in elections. Other amendments change, throughout the sections, the unit of cotton acreage to be used in determining cotton production of voters and make other changes for purposes of clarification.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the Texas Agriculture Code, §74.114, which requires the department to adopt procedures for conducting of elections by the Boll Weevil Eradication Foundation.

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 December 10, 1993.

TRD-9333452

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: December 31, 1993

Proposal publication date: November 9, 1993

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

◆ ◆ ◆  
**TITLE 28. INSURANCE**  
**Part I. Texas Department**  
**of Insurance**

**Chapter 1. General**  
**Administration**

**Subchapter A. Rules of Prac-**  
**tice and Procedure**

• **28 TAC §1.90**

The Texas Department of Insurance adopts new §1.90, concerning the joint memorandum of understanding (MOU) to be entered into by the Texas Department of Insurance (TDI) and the State Office of Administrative Hearings (SOAH), with changes to the proposed text

as published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7284).

The rule is necessary to comply with statutory requirements in the Insurance Code, Article 1.33B(d), which mandates the commissioner of TDI and the chief administrative law judge of SOAH to adopt by rule an MOU governing hearings held by SOAH under the Insurance Code and other insurance laws of this state. The statute provides that the MOU shall require the chief administrative law judge and the commissioner of insurance to cooperate in conducting hearings under Article 1.33B and that the MOU may authorize SOAH to perform any procedural act, including the giving of notice, that is required to be performed by the commissioner under the Insurance Code or another insurance law of this state. The changes made in the text are reflected in

(4) **Summary of Comments**  
**and Agency Response to Comments**  
in this preamble.

The rule will accomplish the efficient and expeditious administration of TDI hearings by establishing the procedures to be used by each agency and by clearly delineating each agency's responsibilities. Additionally, the rule informs the public of each agency's responsibilities and the procedures for the institution, conduct and determination of proceedings before SOAH on behalf of TDI.

One commenter raised the concern that the format of the proposal was cumbersome and confusing. The commenter suggested a more abbreviated format and suggested deleting language that was not essential to a clear understanding of the proposal. The department agrees and has reformatted the proposal accordingly.

Two commenters suggested that notice be given to all parties when an ALJ amends an order. The department agrees and has modified the proposal in subsection (g)(3) to require the ALJ to promptly provide a copy of any amended proposals for decision and proposed orders to the commissioner and all parties.

Two commenters recommended that notice be given to all parties if a matter is remanded. The department agrees and has modified subsection (g)(6) of the proposal to in-

clude language requiring the ALJ to notify the parties when a case is remanded.

Four commenters recommended that the MOU provide for an appeal to the commissioner of interim orders issued by the ALJ. The department agrees and has included a provision for an appeals process in subsection (f)(3).

Two commenters recommended the addition of a definition of the term "interim order." The commenters suggested that the scope of the review of the interim order should be confined to rulings which constitute an abuse of discretion and which would result in immediate and irreparable harm. The department has modified the proposal to include a definition of the term "interim order." However, the department disagrees because parties should be afforded the right to appeal if they believe they are aggrieved, and not only in situations where immediate and irreparable harm would result.

Two commenters suggested that additional language be added to subsection (f) (3) to clarify the parties' right to seek judicial review of a commissioner's order ruling on any appeal of an interim order. The department agrees and has modified subsection (f)(3) as suggested.

One commenter suggested adding a provision in subsection (i) that the department provide transcripts of the record free of charge to the parties and the public upon request. The commenter later amended its recommendation that audio tapes of the recorded portions of the hearing record be provided free of charge when tape cassettes are provided by the requester. The department agrees that copies of the audio tapes of the recorded portions of the hearing record be provided free of charge when the tape cassettes are provided by the requester. The department has amended the rule accordingly.

One commenter suggested that there be no charges for copies of the record. The department disagrees that no charges for copies be made because House Bill 1009 requires all state agencies to charge the following costs for copies:

## Photocopies of paper records

50 pages or less	12 cents per page
More than 50 pages	98 cents for the first page 18 cents for each remaining page

## Other copies

Diazo copies	29 cents per page
Microfilm/fiche copies	63 cents per page

Therefore, the department did not include language providing for copies of the record to be made free of charge.

Two commenters suggested that there be no charges for certifications of the hearing record. The department agrees, although its policy has historically been to charge for certifications of contested case records. The staff has amended the section accordingly.

One commenter suggested that all parties should be notified of all written inquiries or questions by the commissioner to the ALJ relating to proposed orders. The department agrees and notes that the proposal as published provides that the commissioner will send copies to all parties of record.

One commenter suggested that the proposal contained a technical error concerning the use of the terms "rate" and "rate-related" in referring to cases under the procedures set out in the Insurance Code, Article 1.33B(c). The commenter stated that Article 1.33B procedures apply only to rate promulgation proceedings and do not apply to all contested rate cases. The commenter further stated that the APA and its procedures apply to contested rate cases involving individual companies while the procedures in Article 1.33B(c) apply only to rate promulgation proceedings. The commenter suggested that whenever the MOU refers to a "rate" or "rate-related" case, the MOU should read "rate promulgation" case. The commenter further suggested that whenever the MOU refers to a "non-rate" case or a case "other than a rate case," the MOU should refer to a "non-rate promulgation" case or a case "other than a rate promulgation case." The department agrees and has amended the section accordingly.

One commenter suggested that hearings be conducted in accordance with the Insurance Code, Article 1.33B where applicable in subsection (f)(1). The department disagrees because the proposal already requires that hearings be conducted in accordance with the Insurance Code, which would include Article 1.33B.

One commenter suggested inserting a provision that in the event of any conflict between the Insurance Code, Article 1.33B(c), and either the SOAH rules of procedure, or the TDI rules of procedure, Article 1.33B(c) prevails in

rate promulgation proceedings. The department agrees and has added the provision as suggested.

One commenter suggested to add that by interim order, the ALJ establish deadlines and procedures for the filing of affidavits, the designation of witnesses and other matters. The department disagrees that an interim order must be issued because this requirement may not be necessary and the ALJ may wish to determine deadlines, procedures and other matters by a transmittal letter. Consequently, the department did not add "by interim order" before the provision allowing the ALJ to determine such matters.

One commenter suggested a revision to subsection (f)(6) on informal disposition, which essentially generalized the language as published, and provided that upon request, dismissal shall be granted without prejudice. After discussions between the commenter and the department, the commenter agreed to the published language, except the commenter suggested adding its provision of "dismissal without prejudice." The department disagrees with adding the provision of "dismissal without prejudice" because it may add confusion that SOAH is dismissing the entire case rather than withdrawing the case from its docket. Consequently, the department has amended subsection (f) (6) to require TDI's docket clerk to file a request to withdraw the case from the SOAH docket and also include a copy of the order disposing of the case. The department also added that SOAH shall then withdraw the case from its docket.

One commenter suggested that in non-rate promulgation cases, the commissioner may consider the proposal for decision, the exceptions, briefs, reply briefs and oral arguments either entirely upon written submission or at an open meeting notified in the *Texas Register*. The department disagrees that an open meeting is the appropriate forum because a single decision maker is not subject to the Open Meetings Act. Consequently, the department has added a provision allowing the commissioner to consider proposals for decision, the proposed order, exceptions, briefs, reply briefs, and arguments, either upon written submission or at a public meeting.

One commenter suggested that when the commissioner considers proposals for decision and rate orders relating to rate promulgation proceedings at an open meeting, that

the parties be provided an opportunity for oral argument. The department disagrees with this provision because Article 1.33B provides that the parties can be given an opportunity for argument, but does not specify whether the argument may be oral or written. Therefore, the department did not include the term "oral" preceding "argument" in subsection (g)(4).

One commenter suggested including "proposed order" with "proposal for decision" in subsection (g) concerning the submission, consideration and amendments of the proposal for decision. The department agrees and has amended the provisions accordingly.

One commenter suggested adding a provision stating that in rate promulgation proceedings, any such amendment to the proposed order by the commissioner need only be accompanied by an explanation of the factual and legal basis for the amendment. While the department agrees in general that a statement concerning the explanation of the factual and legal basis for the amendment be included, it disagrees with the specific language suggested because it does not track Article 1.33B. Therefore, the department has modified the suggested language to more closely track the statute.

One commenter suggested excluding the terms "promulgating the rate," from the provision which states, "The commissioner's order promulgating the rate, including any amendment thereto, shall be based solely upon the record before the ALJ." The department disagrees because this deletion would change the provision to apply to all commissioner's orders rather than rate orders as contemplated by Article 1.33B. Consequently, the department has left the language as published.

One commenter suggested that when a motion for rehearing is granted and the case is remanded for further proceedings, that notice be given to all parties of record. The department agrees that the parties should be given notice of the rehearing and has modified the language in subsection (h) accordingly.

The department received comments from the Office of Public Insurance Counsel, Allstate Insurance Company and E. Eugene Palmer which were generally in favor of the proposal. Those making comments against specific provisions of the proposed section included

the Office of Public Insurance Counsel, the Texas Land Title Association, and State Farm Insurance Company.

These new sections are proposed under the Insurance Code, Articles 1.03A and 1.33B. Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department. Article 1.33B mandates that the commissioner of TDI and the chief administrative law judge of SOAH shall adopt by rule the MOU.

*§1.90. Joint Memorandum of Understanding (MOU) between Texas Department of Insurance (TDI) and State Office of Administrative Hearings (SOAH) Concerning Procedures for Contested Cases Before SOAH and Responsibilities of Each Agency.*

(a) General Statement.

(1) The Insurance Code, Article 1.33B, added by Chapter 685, §2.01, 73rd Legislature, 1993, mandates the commissioner of TDI and the chief administrative law judge of SOAH to adopt by rule a joint MOU governing hearings held by SOAH under the Insurance Code and other insurance laws of this state. The statute provides that the MOU shall require the chief administrative law judge and the commissioner of insurance to cooperate in conducting hearings subject to its provisions. Article 1.33B requires that a SOAH administrative law judge (ALJ) conduct any contested case hearing required or permitted to be held before a decision may be rendered or action taken by the commissioner or TDI, including but not limited to hearings relating to the approval or review of rates or rating manuals filed by individual companies, rate proceedings which includes the benchmark rate hearings, and other annual rate hearings. However, no later than September 1, 1994, or as long as the board retains jurisdiction of proceedings involving promulgation and approval of rates; promulgation and approval of policy forms and policy form endorsements; and hearings, proceedings and rules related to the referenced activities the proceedings, that are held before or pending on January 1, 1994 shall be heard by the board or the board's designee.

(2) The MOU is necessary to accomplish the efficient and expeditious hearing of matters under the jurisdiction of TDI by establishing the procedures to be used by each agency and clearly delineating each agency's responsibilities. Additionally, the MOU is necessary to inform the public of each agency's responsibilities and the procedures for the institution, conduct and determination of proceedings before SOAH on behalf of TDI.

(3) The MOU provides procedures for referring the case to SOAH, the notice of hearing, filing requirements, hearings, final orders, motions for rehearing, and custody of the hearing record.

(b) Definitions. The following meanings apply to this section unless expressly stated otherwise:

(1) Contested Case means a proceeding, including but not restricted to ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing as defined in the Government Code, §2001.003.

(2) Motion for Reconsideration means a motion filed with the commissioner by any insurance company or other party at interest, if dissatisfied with any ruling, action, decision, regulation, order, rate, rule, form, act, or administrative ruling by TDI staff adopted by the commissioner.

(3) Summary Procedures means a set of procedures created by TDI for handling specifically designated routine matters, although such matters would otherwise be subject to the Administrative Procedure Act, the Government Code Chapter 2001. The procedures are published in 28 TAC §§1.701-1.705 (relating to summary procedures for routine matters).

(4) Interim Order means an order by an ALJ which decides discovery and prehearing matters, including but not limited to matters concerning motions, evidence or testimony, but which is not a final decision disposing of the whole case.

(c) Referral of contested case to SOAH.

(1) Referral of a contested case to SOAH may be made only by TDI. The referral is initiated by filing with SOAH either a request for setting of hearing form or a request for assignment of ALJ form as provided in subparagraphs (A) and (B) of this paragraph. In addition to filing the appropriate form, a referral also consists of items listed in subparagraphs (C) -(E) of this paragraph.

(A) The request for setting of hearing form shall be filed when TDI seeks to have the case set for hearing and no prehearing matters requiring resolution by an ALJ are anticipated. If prehearing matters arise after the request for setting of hearing form is filed, SOAH shall assign an ALJ to resolve the matter.

(B) The request for assignment of ALJ form shall be filed when TDI anticipates the need for one or more prehearing conferences and/or the need for an ALJ's ruling on various matters prior to commencement of the hearing. If no request for setting of a hearing is included in the request for assignment of an ALJ, the date for the hearing shall be determined by the assigned ALJ.

(C) All pleadings in the case, including but not limited to complaints, petitions, applications, motions, or such other documents describing agency action relating to the contested case;

(D) An accurate service list; and

(E) Notification of any statutory deadlines involving the contested case.

(2) Following receipt of the request for assignment of ALJ form, SOAH shall assign the case a docket number, assign an ALJ, and notify all parties in writing of the ALJ assigned to the case. If TDI also requests a hearing date, then SOAH shall provide a date and a confirmation of the setting to TDI. Following receipt of the confirmation of the setting of the hearing, TDI shall send its notice of hearing.

(3) TDI should file a request for setting of hearing within 24 hours of receipt of a request by any party for an expedited hearing in TDI referrals requiring expedited action such as supervision and conservation of insurers; emergency cease and desist proceedings; hearings required to be held before the statute of limitations runs; hearings required to be held in order to retain jurisdiction; and hearings involving a request for stay pending the determination of the case. In cases requiring an expedited hearing, SOAH should confirm with TDI a hearing date and docket number within 24 hours of such request.

(4) Any insurance company or other party at interest, if dissatisfied with any ruling, action, decision, regulation, order, rate, rule, form, act, or administrative ruling by TDI staff adopted by the commissioner, may file a motion for reconsideration with the TDI docket clerk. The TDI docket clerk shall forward the motion for reconsideration to the commissioner for a determination. If the motion is granted, the motion becomes the initial pleading and TDI shall initiate the contested case by filing either a request for setting of hearing form or a request for assignment of ALJ form. However, if the ruling concerns rulemaking proposals or other matters not subject to a contested case, including rulings relating to a regulation, rule, or form, the motion for reconsideration will not be forwarded to SOAH, but shall be handled by the commissioner in an appropriate manner consistent with the type of case.

(d) Notice of hearing.

(1) Upon receipt of the docket number, location and setting date from SOAH, TDI shall issue the notice of hearing as required by the Insurance Code and the Government Code, and will serve the

notice of hearing by certified mail, return receipt requested, to all parties to the docketed matter. An administrative law judge may issue notice of date, time, and place for hearings.

(2) Notice is governed by the Government Code, §2001.051 and §2001.052, unless alternative procedures are permitted by law. The notice shall include the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and any corresponding regulations to which the hearing relates; a short, plain statement of the matters asserted; the docket number; and a certificate of service.

(e) Filing requirements. Filing of documents shall be made in accordance with the following:

(1) Any party filing notices of hearing, staff memoranda, and pleadings (including discovery), motions, and such other filings except motions for reconsideration, motions for review of summary procedures, motions for rehearing and appeals of interim orders shall file the original with SOAH and a true and correct copy with the TDI docket clerk. Such documents shall be delivered to TDI and SOAH by the same method and on the same date.

(2) All motions, except motions for rehearing, motions for reconsideration, motions for review of summary procedures, and appeals of interim orders, shall be addressed to SOAH.

(3) All motions for rehearing, motions for review of summary procedures, motions for reconsideration, and appeals of interim orders seeking action to be taken by the commissioner of insurance, shall be addressed to the commissioner and shall be filed with the TDI docket clerk. A true and correct copy of all motions for rehearing and appeals of interim orders shall be filed with SOAH on the same date and by the same method as filed with TDI.

(4) Any ruling or prehearing order concerning a delay, continuance, or future filing shall be forwarded to the TDI docket clerk on the same date and by the same method as forwarded to other parties.

(f) Hearings.

(1) Hearings, including prehearing proceedings on contested cases shall be conducted in accordance with the Government Code, Chapter 2001, the Insurance Code, the TDI rules of procedure, and the SOAH rules of procedure; any other applicable law and accompanying regulations.

(2) In the event of any conflict between the SOAH rules of procedure and the TDI rules of procedure, the rules of TDI

control, unless otherwise specifically stated in the SOAH rules of procedure (see 1 TAC §155.5). In the event of any conflict between the procedures in the Insurance Code, Article 1.33(B)(c) and either the SOAH rules of procedure or the TDI rules of procedure, the procedures in the Insurance Code, Article 1.33B(c) control in rate promulgation proceedings.

(3) Any party may appeal any interim order issued by the ALJ to the commissioner. An order entered by the commissioner on any appeal of an interim order is binding upon the parties and the ALJ subject to the right of an aggrieved person to seek judicial relief.

(4) The ALJ shall establish reasonable deadlines and procedures for the filing of affidavits, the designation of witnesses, and such other matters as are necessary or appropriate.

(5) The respondent in any non-rate promulgation proceeding shall file an answer with the ALJ in accordance with the SOAH rules of procedure and the Texas Rules of Civil Procedure.

(6) If the commissioner or the commissioner's designee informally disposes of a contested case by stipulation, agreed settlement, consent order, agreed order or default as provided in the Insurance Code, Article 1.10(7)(d) and the Government Code, §2001.056, the TDI docket clerk shall file a request to withdraw the case from the SOAH docket and include a copy of the order. SOAH shall then issue an order withdrawing the case from the SOAH docket.

(7) In non-rate promulgation proceedings where the parties stipulate that there are no issues in dispute, and a hearing is required by statute, the ALJ shall convene the hearing, allow the parties to present evidence and stipulate to the facts, recess the hearing, and allow the parties to present an agreed order to the commissioner.

(8) TDI shall provide court reporting services for all hearings held by SOAH.

(g) Final Orders.

(1) The ALJ shall prepare and issue the proposal for decision and a proposed order. Legal citations in the proposed order shall be made in accordance with the Texas Rules of Form. The proposal for decision shall include proposed findings of fact and conclusions of law. The commissioner may not attempt to influence the ALJ's findings of fact, conclusions of law, or the ALJ's application of the law to the facts in any proceedings. Unless otherwise provided by statute, or ordered by the commissioner prior to the referral of the case, the ALJ shall issue a proposal for decision

and proposed order no later than the 60th day after the date the record is finally closed.

(2) The ALJ shall submit the proposal for decision and the proposed order to the commissioner and shall serve true and correct copies of the proposal for decision and the proposed order by registered mail upon the parties. By transmittal letter, the ALJ shall establish deadlines and give each party the opportunity to file exceptions to the proposal and order, briefs and reply briefs related to the issues addressed in the proposal for decision and proposed order. The deadlines shall be in accordance with TDI's rules of procedures and applicable policies.

(3) The ALJ may amend the proposal for decision and proposed order pursuant to exceptions, briefs and reply briefs without the proposal for decision and proposed order again being served on the parties. The ALJ shall promptly provide a copy of any amended proposals for decision and proposed orders to the commissioner and all parties.

(4) The commissioner may consider the proposal for decision and proposed order prepared by the ALJ, the exceptions, briefs, reply briefs and the arguments of the parties entirely upon written submission or in a public meeting. If considered in a public meeting, then the notice will be published in the *Texas Register*. At the request of the commissioner, the ALJ shall be available to present the proposal for decision and proposed order either at the open meeting or in such other forum where all parties are provided an opportunity to participate. However, the commissioner shall consider proposals for decisions and rate orders relating to rate promulgation proceedings at an open meeting.

(5) The commissioner may amend the proposal for decision or the proposed order, including any finding of fact or conclusion of law. In non-rate promulgation proceedings, the commissioner may amend the proposal for decision or order only for policy reasons stating the reason and legal basis in writing. However, in rate promulgation proceedings, any commissioner amendment to the proposed order shall be accompanied by an explanation of the basis for the amendment. The commissioner's order promulgating the rate, including any amendment thereto, shall be based solely upon the record made before the ALJ.

(6) If the commissioner seeks clarification or additional information relating to the proposed order, the commissioner may send written questions, including a request to reopen the hearing if necessary to the ALJ with copies to all parties of record. If the information necessary to respond to the commissioner's questions is not already

in evidence, the ALJ shall treat the commissioner's request as a "remand" of the case for further hearing and shall notify all parties of record of the remand.

(7) Upon the commissioner's issuance of any order that may become final under the Government Code, §2001.144, TDI's docket clerk shall send a copy of the order by certified mail, return receipt requested, pursuant to the Insurance Code, Article 1.10B and by first-class mail, pursuant to the Government Code, §2001.142 to the parties or their representatives, and to SOAH. TDI's docket clerk shall keep an appropriate record of the mailing.

(h) Motions for rehearing. The commissioner may state in a written order or on the record the decision as to a motion for rehearing, or may allow the motion for rehearing to be overruled by operation of law and take no action. When a motion for rehearing is granted and if the commissioner remands for further proceedings, the ALJ, upon notice to all parties of record, shall convene the rehearing under the same docket as the original hearing.

(i) Custody of the hearing record.

(1) SOAH shall maintain the official record in a contested case from the time TDI refers the case to SOAH until the conclusion of the administrative hearing process. TDI shall also maintain a copy of the record at all times. The conclusion of the administrative hearing process occurs when there is:

(A) the entry of an order by an ALJ to withdraw or dismiss a case from the SOAH docket either by the granting of a party's motion or on the ALJ's own motion;

(B) the expiration of the deadline for filing a motion for rehearing in a contested case, when no such motion is filed;

(C) the denial of a motion for rehearing by the commissioner; or

(D) the overruling of a motion for rehearing by operation of law.

(2) Prior to the conclusion of the administrative hearing process, any request for a copy or transcript of the record may be directed either to SOAH or TDI. Requests for official copies shall be directed to SOAH as the official custodian authorized to certify as to the completeness of the record before the conclusion of the administrative hearing process. No charge will be made for any certifications of the record or for audio copies of the hearing record when the blank tape cassettes are provided by the requester.

(3) After the conclusion of the administrative hearing process, the duty of official custodian of the record shall be transferred to TDI. SOAH shall deliver the official record to TDI along with a certified statement that the documents delivered constitute the complete record in the case. Any request for a copy or transcript of the record shall then be directed to TDI. TDI shall have the authority to certify as to the completeness of the record.

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 December 9, 1993.

TRD-9333367

Linda K. von Quiltnue-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date: December 30, 1993

Proposal publication date: October 19, 1993

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

### Chapter 3. Life, Accident and Health Insurance and Annuities

#### Subchapter F. Group Health Insurance Mandatory Conversion Privilege

##### • 28 TAC §§3.501-3.512

The State Board of Insurance of the Texas Department of Insurance and the Commissioner of Insurance adopt new §§3.501-3.512. Sections 3.501, 3.505, 3.506, 3.507, and 3.509 are adopted with changes to the proposed text as published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7512). Sections 3.502-3.504, 3.508 and 3.510-3.512 are adopted without changes and will not be republished.

These sections are necessary to set out the requirements for complying with the provisions of Article 3.51-6, §1(d)(3), which requires the board to issue rules and regulations establishing minimum standards for benefits under conversion policies. Section 3.501(b) is amended to indicate that group Medicare Supplement insurance and group CHAMPUS Supplement insurance are exempted from these provisions. This change is made as a result of comment because the change is necessary to allow compliance with federal guidelines relating to these two programs. Section 3.506(d) is amended as a result of comment, to indicate that the relationship of benefits to premiums paid must be reasonable and subject to the maximum 200% cap. Section 3.505 is amended to provide clarification about when there is a right to conversion or continuation coverage. Section 3.507 is amended to indicate that the choices between the three plans to be offered to con-

verting persons is limited to those plans which afford lesser coverage than the plan which the converting person had prior to the conversion. This change is made as a result of comment which indicated that there was some confusion on this issue. The language will clarify the situation. Section 3.509(c) is amended to correct a typographical error in the proposed sections to indicate that the forms are outlined in subsection (b)(2), rather than subsection (b)(a).

These sections set out the requirements for complying with the provisions of Article 3.51-6, §1(d)(3), which requires a conversion privilege for any employee, member, or dependent whose insurance under a group policy has been terminated for any reason. Section 3.501 describes the purpose and scope of these sections, and §3.502 contains the definitions for words and terms used in this subchapter. Section 3.503 sets forth the conditions and circumstances under which a converted policy shall be issued. Section 3.504 sets forth the notification requirements for employers/group policyholders and insurers. Section 3.505 sets out the mandatory group policy provisions for conversion and continuation options. Section 3.506 sets out the conversion premium requirements. Section 3.507 sets out the minimum benefits which must be offered in converted policies, and sets out requirements for election of lesser coverage and alternate plans. Section 3.508 sets out the requirements for provisions of the converted policy and §3.509 details the form filing requirements for policy forms providing conversion coverages. Section 3.510 sets out the language readability requirements for policies, certificates, and related documents and forms. Section 3.511 describes the requirements for continuation, including the requirements for election and termination of the continuation coverage. Section 3.512 describes the date the sections are effective for policies issued, delivered, or renewed after that date.

Comments Relating to Applicability of Conversion Rules.

A commenter stated that the statute was not intended to apply to group Medicare Supplement insurance or group CHAMPUS Supplement insurance, and requested that the regulation be clarified to specifically exclude these types of policies from the definition of expense-incurred policies.

Agency Response. The agency agrees with the commenter, and language has been added clarifying the applicability of the conversion regulations. In order to accommodate federal guidelines, both group Medicare Supplement insurance and group CHAMPUS Supplement insurance are excluded from the definition of expense-incurred policies.

Comments Relating to Applicability of Conversion Rules.

A comment stated that the conversion rules are too liberal and should be constructed as narrowly as possible given the requirements stated in Insurance Code, Chapter 26. The comment stated that HMOs are not bound to comply with the same requirements as insurers. The comment addressed specific concerns as they relate to use in HMO products.

**Agency Response.** The agency does not agree with the comments. The conversion rules addressed in §§3.501-3.512 do not include conversion requirements for HMOs. The conversion rules applicable to HMOs are addressed in Texas Administrative Code, Chapter 11.

**Comments Regarding Purpose and Scope.**

A comment recommended that §3.501(a)—in the parenthetical phrase "(and under any policy providing similar benefits which it replaces)" should be changed to read "(and under any group policy providing similar benefits which it replaces)." The inclusion of the word group simply brings the rule in line with the wording in Insurance Code, Article 3.51-6, §1(d)(3).

**Agency Response.** The agency does not agree with the recommendation. The agency believes that the language is clear as published and no change is necessary.

**Comments Regarding Definition of "Immediate or Immediately".**

A comment stated that although it appears that any requirements for "immediate" response are on the employer, not the carrier, in the context of the rules, five working days may simply not be adequate time. A more reasonable time frame might be ten working days.

**Agency Response.** The agency has not made any change in the language. Current statutes and regulations pertaining to notice requirements related to certain continuation and conversion options available to an insured require "immediate" notification by the group policyholder. At the request of representatives from interested parties, staff has included a definition of the term "immediate" in relation to these notice requirements for the purpose of clarification in administration. The time frame of "five working days" is a compromise of recommendations made by representatives of interested parties.

**Comments Regarding Notification Requirements.**

A comment stated that the notice requirement in §3.504(b) is impossible for an insurer to comply with, and shifting this responsibility to the insurer runs afoul of ERISA.

**Agency Response.** The agency disagrees. The offer of same coverage by the insurer is required by Texas Insurance Code, Article 3.51-6, §1(d)(3)(A)(i). The time limit was a compromise of recommendations made by representatives of interested parties.

**Comments Regarding Notification Requirements.**

Another comment stated that §3.504(a) outlines the notice requirements but is silent on who has the duty to provide notice.

**Agency Response.** The agency believes that §3.504 adequately describes the notification requirements in relation to the employer/policyholder and insurer.

**Comments Regarding Notification Requirements.**

Another comment stated that the notice requirement is not a requirement included in

Insurance Code, Article 3.51-6. It will add to administrative costs. Insurers can provide notice of conversion and continuation privileges to employees. However, the requirement to provide notification to the dependents will require major modification in record keeping policies.

**Agency Response.** The agency does not agree with the recommendation. The insurer is required by Texas Insurance Code, Article 3.51-6, §1(d)(3)(A)(i) to offer to each employee, member, or dependent the option of conversion to a policy providing same coverage and benefits. Therefore, it would be inappropriate to eliminate requirements of notification to the dependents.

**Comments Regarding Notification Requirement.**

Given that the notification requirement is not dictated by the law, the comment requested that the agency modify the rule by deleting the references to "dependents" in the requirement.

**Agency Response.** The agency believes that the prescribed notification format is necessary in order to accomplish the intent of the provisions of Texas Insurance Code, Article 3.51-6, §1(d)(3) and to provide a uniform mechanism for notification for insurers and employers/policyholders.

**Comments Relating to Requirement of Offer of Same Coverage and Benefits.**

A comment stated that the requirement to provide "same coverage" is impractical and costly. It creates more harm than good for the Texas consumer. The cost to consumers could be greatly minimized by requiring minimum conversion benefits, in lieu of "same coverage."

**Agency Response.** The agency disagrees. The requirement of the initial offer of same coverage is included in Texas Insurance Code, Article 3.51-6, §1(d)(3).

**Comments Relating to Offer of Coverage.**

Section 3.503(b)(2) provides that the alternative or lesser coverage not be offered until the offer of the same coverage has been rejected in writing. This is extremely awkward and time consuming. Both offers should be put before the eligible person at the same time to permit a comparison of coverages and premiums for the two plans.

**Agency Response.** The agency does not agree that this section would require written rejection of the same or similar coverage before the offer of lesser coverage could be made. This provision of the rules permits the insured individual to choose a lesser coverage option (in accordance with the statutory provisions) and would require written rejection as part of the election process.

Furthermore, §3.504 relating to notification requirement of employer/group policyholders and insurers, prescribes a mandatory format for a written notice addressing all conversion/continuation options to be presented to eligible individuals. The prescribed format would require a description of all options with the intent of allowing for immediate comparison of coverages and premiums.

**Comments Relating to Offers and Renewal of Conversion.**

A comment states that §3.503(b)(6)(B) allows termination of conversion coverage if the person has other similar health coverage. Apart from the fact that similar is impossible to divine and easily spurs litigation, this requirement conflicts with the COBRA "other coverage" cases.

**Agency Response.** The agency disagrees. The referenced section, §3.503(b)(6)(B), does not allow for termination of conversion coverage if the person has other similar health coverage. This section references the situations in which an insurer would not have to offer a conversion or continuation option to an insured individual (as defined by statute).

The agency believes §3.511(d)(1) does identify coverage under a similar health plan as a reason that a carrier may refuse to renew a converted coverage. The agency feels that minimum standards for renewability are essential to the implementation of the requirements of Article 3.51-6, §1(d)(3). The regulations have incorporated the statutory defined instances in which a conversion option would not be required as the permitted criteria for refusal to renew a converted coverage after issuance.

The agency does not agree that there is a conflict with COBRA.

**Comments Relating to Conversion After COBRA and ERISA.**

A comment states that the §3.503(g)(4) requirement to provide conversion and conversion notice after COBRA is preempted under ERISA.

**Agency Response.** The agency disagrees. Depending upon specific circumstances we believe that these rules can be utilized in connection with ERISA plans. Since ERISA is necessarily fact specific, insurers will need to contact the Department on specific fact circumstances relating to allegations of ERISA preemption.

**Comments Relating to Conversion Circumstances under Which a Conversion Privilege Shall not be Required**

A comment states that in §3.503(6)(A)—the word "person" should be deleted and the statement should be rewritten to read "(A) termination of the group coverage occurred because of nonpayment of premium.

The suggested modification would simply conform this subsection to the language of the policy continuation/conversion provision included in §3.505.

**Agency Response.** The agency does not agree with the recommendation. The language included in §3.503(6)(A) is contained in the Texas Insurance Code, Article 3.51-6, §1(d)(3).

However, the agency does agree that an inconsistency exists in language contained in the sample policy provision referenced in §3.505. That provision has been amended to read: "1. the termination of coverage occurred because you failed to pay any required premium or any discontinued group coverage was replaced by similar group coverage within 31 days of the discontinuance; or".



**Comments Relating to Mandatory Group Policy Provisions.**

A comment recommends substitution of the term "employer" for the term "policyholder" in the "Notification Requirements" language of §3.505.

Agency Response. The agency does not agree with the recommendation. Since the applicability of these regulations is not limited to employer groups, use of the term employer would not always be appropriate. Furthermore, the language contained in this section is consistent with the statutory provisions of Texas Insurance Code, Article 3.51-6, §3B.

Section 3.505 establishes a minimum standard for the language that must appear in every group policy. Since the provision must be the same or similar to the provision contained in the regulation, there is some flexibility for modification of terms when appropriate.

**Comments Relating to Conversion Premium.**

A comment states that the three promulgated forms will produce significantly different loss ratios for "conversion policies" that include no element of underwriting compared to loss ra-

tios utilizing different underwriting standards. The antiselection to be expected from persons actually exercising these conversion privileges will produce exceedingly high loss ratios, very likely not at all sufficient to be covered by the very high premiums such persons will pay for the conversion policies.

Agency Response. The agency does not agree that the provision is inappropriate. The requirement is in accordance with Texas Insurance Code, Article 3.51-6, §1(d)(3), which states that the premium must be based on the type of converted policy and the coverage provided by the policy. However, for clarification purposes, the agency has changed the language in this section to indicate the relationship of benefits to premiums paid must be reasonable, subject to the 200% cap.

**Comments Relating to Minimum Benefits for Lesser Coverage Options.**

Comments object to the language requiring a choice between the three plans. Concerns regarding the choice among options included objections to the requirement of multiple choices, the administrative burden of multiple benefit plans, and concerns over too many choices for the consumer were expressed.

Comments further questioned whether or not the published language actually achieved a lesser benefit option and offered alternatives.

Agency Response. The agency does not agree with these comments.

The language as written would require that the three plans be made available as choices; however, the rules further state that an insurer would not have to permit a conversion that would afford greater coverage than that provided in the converting plan; however, due to this confusion, the agency recommends additional language to clarify this section by qualifying the choices among only those plans which afford lesser coverage.

The following change has been made: Each insurer shall make available to any employee, member, or dependent electing lesser coverage, a choice among the three plans which will afford lesser coverage.

The comments were not against the sections as a whole, but the following organizations commented against specific provisions of the sections.

<u>Organization</u>	<u>Section</u>
USAA Life Insurance Company	3.501
Scott and White Health Plans	3.501
Golden Rule Insurance Company	3.501, 3.503, 3.504, 3.505, 3.507
Texas Life Insurance Association	3.502, 3.503, 3.506, 3.507
The Principal Financial Group	3.503, 3.504

These sections are adopted under Insurance Code, §§1.03A, 1.33, 21.20, 21.21, 3.42, 3.51-6; and §1.23 of House Bill 1461, 73rd Legislature, Regular Session. Insurance Code, Article 3.51-6, §1(d)(3), contains requirements for conversion or continuation privileges for the policies covered by that section. Under that statute, the board is required to issue rules and regulations to establish minimum standards for benefits under conversion policies. Insurance Code, Article 3.42, contains filing requirements for policies, contracts, certificates and forms subject to that statute and specifically authorizes the board to adopt reasonable rules and regulations as necessary to implement and accomplish the provisions of that statute. Insurance Code, Articles 21.20 and 21.21, prohibit misrepresentation of policies and unfair competition and unfair practices; and Article 21.21, authorizes the board to promulgate reasonable rules and regulations to accomplish the purposes of those Articles. Insurance Code, Article 1.03A, sets forth the requirements for rules of general application to be adopted by the commissioner of insurance. Article 1.33

sets forth the summary procedures for routine matters. Section 1.23 of House Bill 1461 authorizes the promulgation and approval of rules relating to rates, policy forms, and endorsements by the State Board of Insurance.

*§3.501. Purpose and Scope.*

(a) The purpose of this subchapter is to address requirements and set minimum standards of benefits for any conversion policy issued in accordance with a conversion privilege provided under a group health benefit plan. Under Insurance Code, Article 3.51-6, §1(d)(3), a conversion privilege is required with respect to any employee, member, or dependent whose insurance under a group policy has been terminated for any reason (except involuntary termination for cause), including discontinuance of the group policy in its entirety or with respect to any insured class, and who has been continuously insured under the group policy (and under any policy providing similar benefits which it replaces) for at least three

months immediately prior to termination. A conversion may be provided either through an individual conversion policy or through establishment of a group conversion trust as authorized under Insurance Code, Article 3.51-6, §1(a)(5). References to a conversion policy mean either a group policy or individual policy (except as otherwise indicated).

(b) The provisions of this subchapter shall apply to any insurer, or group hospital service corporation subject to Insurance Code, Chapter 20, which issues policies providing hospital, surgical, or major medical expense insurance or any combination of these coverages on an expense-incurred basis. However, the provisions of this subchapter shall not apply to policies providing benefits for a specified disease or diseases only or for accident only or group Medicare supplement insurance or group CHAMPUS supplement insurance. With respect to any defined minimum standards for conversion policies, the provisions of this

subchapter shall apply equally to any insurer or group hospital service corporation subject to Insurance Code, Chapter 20, issuing any other conversion policy.

**§3.505. Mandatory Group Policy Provisions.** Every group accident and health policy/certificate required to include the conversion and continuation options addressed in this subchapter must contain language that is the same or similar to the following: The provision for Additional

Continuation/Conversion for Certain Dependents as required for use in small employer health benefit plans shall be the same or similar to the language found at Chapter 26 of this title (relating to the Small Employer Prototype Policies Form Number 2055 COP).

#### CONTINUATION/CONVERSION PROVISIONS

An Insured Person whose coverage terminates shall have the right to conversion or continuation under the Policy as outlined below. In order to be eligible for this option, the Insured Person must

1. have been continuously covered under the Policy for at least three consecutive months prior to termination; and
2. coverage terminated for any reason other than involuntary termination for cause.

There is no right of conversion or continuation if.

1. the termination of coverage occurred because you failed to pay any required premium or any discontinued group coverage was replaced by similar group coverage within 31 days of the discontinuance, or
2. the Insured Person is or could be covered by Medicare, or
3. the Insured Person has similar benefits under another group or individual plan whether insured or uninsured
4. the Insured Person is eligible for similar benefits under another group plan whether insured or uninsured, or
5. similar benefits are provided for or available to the Insured Person under any state or federal law

**Written application and payment of the first premium must be made within 31 days after the date coverage terminates.**

No evidence of insurability is required. Each Insured Person may select one of the following options:

Option 1. A conversion policy providing the same coverage and benefits as provided under the group Policy. If this option is selected, lifetime maximums shall be computed from the initial effective date under the Health Benefit Plan; or

Option 2. A conversion policy with lesser coverage and benefits. If this option is selected, the benefits and premium will be provided in accordance with the minimum standards for conversion policies.

A conversion policy will be effective on the day after termination of coverage under the Policy. You will be given credit for any satisfaction under the Policy of waiting periods or limitations for any Preexisting Condition

Option 3. Continuation of coverage under the Health Benefit Plan. If this option is selected, continuation will be permitted for a maximum of six months. The premium rate will be 102% of the group premium. The premium will be payable in advance to the Employer or group policyholder on a monthly basis. Continuation may not terminate until the earliest of:

- a. six months after the date the election is made,
- b. the date you fail to make timely premium payments;
- c. the date on which you are or could be covered under Medicare;
- d. the date on which you are covered for similar benefits under another group or individual policy;

- e. the date on which you are eligible for similar benefits under another group plan;
- f. the date on which similar benefits are provided for or available to you under any state or federal law.

[[If the Policy terminates in its entirety before the end of the continuation period, your coverage will continue until the time otherwise specified.] OR [If the Policy terminates in its entirety before the end of the continuation period, you may choose to convert your coverage in accordance with Options 1 or 2.]

**Additional Continuation/Conversion for Certain Dependents**

If coverage terminates as the result of an [Employee's][Member's] death, retirement or divorce, a Dependent's coverage can continue. The Dependent must have been covered under the plan for at least one year, unless the Dependent is an infant under one year of age. Continuation does not require evidence of insurability.

Continuation is not available when coverage terminates due to any of these circumstances:

1. The Policy is cancelled or
2. The Dependent fails to make timely premium payments.

Continuation ends at the earliest of the date:

1. Three years after the date that coverage would have ended;
2. The Dependent fails to make timely premium payments;
3. The Dependent becomes eligible for coverage under any other group plan providing similar benefits;
4. The Policy is cancelled.

**Notification Requirements.** The Dependent must notify the Policyholder within 5 days of the Employee's death, retirement, or divorce. The Policyholder will provide written notice to the Dependent of the right to continue coverage and will send the election form, and instructions for premium payment (within five working days).

Within 60 days of the Employee's death, retirement, or divorce, the Dependent must give written notice to the Policyholder of the desire to exercise the right of continuation or the option expires. Coverage remains in effect during the 60-day period provided premium is paid.

Any Dependent qualifying for continuation of coverage under this provision may elect a converted policy instead of such continuation of group insurance. If the Dependent has elected continuation under this provision, the Dependent will have the option of a conversion coverage at the end of the maximum continuation period. All conversion provisions described in Option 1 and Option 2 will apply.

### §3.506. Conversion Premium.

(a) The premium for any converted policy issued shall be determined as follows:

(1) in accordance with the insurer's table of premium rates for coverage that was provided under the group policy or plan; and

(2) based on the type of converted policy and the coverage provided by the converted policy.

(b) The premium may be based on the age at issue of the conversion policy and the geographic location of each person to be covered and the type of converted policy; however, the premium for the same coverage and benefits under a converted policy may not exceed 200% of the premium de-

termined under subsection (a)(1) and (2) of this section.

(c) All rates for individual conversion policies must be submitted to the Department in accordance with the requirements of Insurance Code, Article 3.42, and §3.3(d)(5) of this title (relating to Specific Additional Submission Requirements). The Department may request documentation related to the premium rates and/or actuarial information of any conversion policy as permitted by §3.2(j)(19) of this title (relating to General Submission Requirements).

(d) Any converted policy providing the same coverage and benefits with a premium rate of 200% of the premium determined under subsection (a)(1) and (2) of this section shall require actuarial data to

substantiate the rate. The premium charged for converted policies must be determined using sound actuarial principles and the relationship of benefits to premiums paid must be reasonable, subject to the maximum 200% cap.

### §3.507. Minimum Benefits.

(a) An insurer shall not be required to issue a converted policy which provides benefits in excess of those provided under the group policy from which the conversion is being made. However, an insurer must first offer to an employee or member or dependent, coverage which has the same coverage and benefits as the coverage provided under the terminating group coverage. Any employee or member or dependent may elect lesser coverage as outlined in paragraphs (1)-(3) of this subsection.

(1) Each insurer shall make available to any employee, member, or dependent electing lesser coverage, a choice among the three plans which will afford lesser coverage: Preventive and Primary Plan, In-Hospital Plan, and the Standard Plan (as defined in Insurance Code, Articles 26.42-26.50, and Chapter 26, §26.14 of this title (relating to Coverage)) establishing promulgated benefits for small employer plans.

(2) An insurer shall not be required to offer the Standard Plan to any employee, member, or dependent converting from a small employer In-Hospital Plan or Preventive and Primary Plan.

(3) In instances of individuals electing lesser coverage conversion from a small employer Preventive and Primary Plan, the policy year maximum benefits defined in Chapter 26, §26.14 of this title (relating to Coverage) for Preventive and Primary Plans shall be reduced by 25% in order to accomplish a lesser coverage option (Reduced Preventive and Primary Plan).

(b) The insurer may, at its option, also offer alternative conversion plans (Alternative Plan-Higher Option) in addition to those required by this section which provide benefits greater than the minimum standards defined for conversion policies. Any Alternative Plan-Higher Option must be approved by the Department prior to use.

### §3.509. Form Filing Requirements.

(a) Each insurer shall be required to submit individual or group policy forms providing conversion coverages in accordance with the requirements of this subchapter. Any accident and health forms filing submitted January 1, 1994, or after shall include the necessary forms, documentation, or certification required by this section. Any insurer subject to the provisions of this subchapter may elect to provide group conversion coverage in lieu of the issuance of an individual converted policy in accordance with the requirements of this subchapter.

(1) If the insurer elects to provide group conversion coverage, the insurer shall establish a trust for the sole purpose of providing conversion coverages on a group basis. A single trust may be used for the purposes of group conversion coverages providing the same benefits and coverages or lesser coverages. However, a policy shall be issued to the trust for the purpose of providing the same benefits and coverages and a separate policy shall be issued to the trust for the purpose of providing lesser coverages in accordance with the requirements outlined in subsection (b) of this section. A single policy may not be used for

the purposes of providing both conversion options.

(2) Any group conversion policy must contain the following provisions:

(A) a provision that the trust policy will not be terminated by either the trustee or the insurer until such time as no certificate holders remain covered under the policy; and

(B) a provision prohibiting any unilateral change in the terms of coverage.

(b) In order to expedite review time and to insure the same benefits and coverages, mandatory use of a policy shell format will be required for any accident and health policy forms providing coverages that are subject to the conversion provisions of this subchapter submitted in accordance with Insurance Code, Article 3.42, and Subchapter (A) of this chapter (relating to Requirements for Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities) on or after January 1, 1994. In addition, all conversion policy forms must be submitted for review in accordance with the requirements of Insurance Code, Article 3.42, and Subchapter (A) of this chapter (relating to Requirements for Filing of Policy Forms, Riders, Amendments and Endorsements for Life, Accident and Health Insurance and Annuities). All forms must have a distinguishing form number located in the lower left hand corner of the form. To insure compliance with the requirements of this subchapter, to expedite review time, and to eliminate multiple form filing requirements, mandatory use of a policy shell format will be required as follows.

(1) The policy shell for policies with the same benefits and coverages will be discussed in this paragraph.

(A) The requirements for the use of individual conversion policies are:

(i) an individual policy shell addressing and including all required provisions for any individual policy;

(ii) an insert provision incorporating by reference the provisions for covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any specified miscellaneous provisions, riders, amendments or endorsements contained in the employee's, member's, or dependent's group certificate on the date of conversion.

(B) The requirements for the use of group conversion policies are:

(i) a group conversion policy shell addressing and including all unique required provisions of the conversion trust;

(ii) an additional insert provision addressing specific conversion policy provisions including termination; and

(iii) an insert provision incorporating by reference the provisions for covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any specified miscellaneous provisions, riders, amendments or endorsements contained in the employee's, member's, or dependent's group certificate on the date of conversion.

(iv) a copy of the trust agreement.

(2) The policy shell for policies with lesser coverage options will be discussed in this paragraph.

(A) The requirements for use of individual conversion policies are:

(i) an individual policy shell document including and addressing all required provisions for any individual policy; and

(ii) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits and any miscellaneous provisions for the Preventive and Primary Plan;

(iii) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits and any miscellaneous provisions for the In-Hospital Plan;

(iv) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits and any miscellaneous provisions for the Standard Plan;

(v) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for the Reduced Preventive and Primary Plan;

(vi) insert benefit provisions including covered services, definitions, exclusions and limitations, the Schedule of Benefits, and any miscellaneous provisions for any Alternative Plan-Higher Option; and

(vii) any additional riders, amendments, enrollment forms, or required documentation as outlined §3.2 of this title (relating to General Submission Requirements).

(B) The requirements for use of group conversion policies are:

(i) a group conversion policy shell document including and ad-

and found to be a valid exercise of the agency's legal authority.

and found to be a valid exercise of the agency's legal authority.

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

TRD-9000427

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

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Proposal publication date: October 29, 1993

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

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**TITLE 30. ENVIRONMENTAL QUALITY**  
**Part I. Texas Natural Resource Conservation Commission**

**Chapter 336. Radiation Rules**

**Source Material Recovery and Radiation Substance Disposal**

**• 30 TAC §§336.1-336.6**

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§336.1-336.4 and new §§36.5 and §336.6, concerning disposal of radioactive substances and source material recovery and processing. Section 336.5 and §336.6 are adopted with changes as proposed in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7459). Sections 336.1-336.4 are adopted without changes and will not be republished.

Adoption of these sections is necessary in order to implement the provisions of Senate Bill 1043, 73rd Legislature, Act of June 19, 1993, Chapter 992, 1993 Texas Session Laws 4343, which transferred jurisdiction over source material recovery and processing operations from the Texas Department of Health (TDH) to TNRCC effective September 1, 1993. Pursuant to this transfer of jurisdiction, the amended and new sections will provide TNRCC with rules and standards with which to implement its authority under the Texas Radiation Control Act (TRCA), Chapter 401, Texas Health and Safety Code (Vernon, 1993), by the adoption of certain portions of the Texas Regulations for Control of Radiation (TRCR), formerly promulgated and enforced by TDH. In addition, this adoption is necessary for the State of Texas to maintain "agreement state" status with the United States Nuclear Regulatory Commission (NRC), as it incorporates revised standards mandated by NRC for all agreement states.

The TNRCC's radiation rules reflect changes made in response to comments received from the regulated community as well as changes necessitated by typographic and publication errors. The latter category of errors were corrected by Correction of Error published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8624).

In response to a commenter who recommended a change to §336.5(a)(1) (relating to Amended TRCR Part 12 Fee Schedules),

TNRCC has deleted entries in the schedule of fees set forth in that section which might be construed to assess fees for activities outside the jurisdiction of TNRCC. In the proposed form, published in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7459), the table found at §336.5(a)(1) was reprinted from the original Texas Regulations for Control of Radiation (TRCR) Part 12, with fee amounts adjusted to reflect amendments adopted by TDH in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4314). In that same July 2, 1993, amendment, TDH removed fee listings for activities over which jurisdiction had been transferred to TNRCC, and the TNRCC's October 26, 1993, proposal restored those listings with the original fees intact. The intent of TNRCC in drafting the October 26, 1993, proposal was to maintain a single source for licensees to refer to in determining fees which were applicable to their activities, regardless of which agency assessed the fees. It was not the intent of TNRCC to assert jurisdiction over TDH-assessed fees. It became apparent after reviewing the comments provided that such an approach caused, rather than cured, confusion among licensees. Therefore, all entries in the fee table in §336.5(a)(1) assessed only by TDH have been removed.

Several typographic and publication errors were discovered upon review of the proposed sections in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7459). These corrections, as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8624), are included in this adoption.

The adopted sections establish regulations for radioactive substance disposal and source material recovery by incorporation of the applicable portions of TDH's Texas Regulations for Control of Radiation (TRCR). TNRCC has initiated a separate rulemaking effort which will republish, within Title 30, Texas Administrative Code (TAC) Chapter 336, the detailed radiation rules that specifically fall under TNRCC's jurisdiction. These detailed rules, which will be in *Texas Register* format (as opposed to the format used for the TRCR), will consolidate all TNRCC rules concerning radioactive substance regulation into Title 30, TAC Chapter 336, and will enable the regulated community to refer to a single source for TNRCC regulations.

The following comments were received at a public hearing held on November 12, 1993, and in writing on November 24 and 29, 1993, concerning the proposed amendments and new sections as published in the October 26, 1993 and November 19, 1993, issues of the *Texas Register* (18 TexReg 7459 and 18 TexReg 8624). Representatives of the law firm of McGinnis, Lochridge, & Kilgore and the environmental consulting firm of Eggleston, Holmes & Associates appeared at the November 12, 1993, public hearing and presented verbal comments. Eggleston, Holmes & Associates also submitted written comments. The law firm of Henry, Lowerre & Taylor submitted written comments.

One commenter drew a comparison between the NRC rule, Title 10 Code of Federal Regulations (CFR) Part 20, and TRCR Part 21 (relating to Standards for Protection Against

Radiation), adopted by reference in §336.1 of this title (relating to Adoption of Texas Regulations for the Control of Radiation) with amendments in §336.6 of this title (relating to TRCR Part 21 Amendments Regarding Waste Management). The commenter pointed out that TRCR Part 21, as amended and adopted by TDH in the July 2, 1993, issue of the *Texas Register* (18 TexReg 4300), appears to have a large number of omissions and modifications when compared with the federal 10 CFR Part 20 rule which render the Texas rule unsuitable for TNRCC adoption. The commenter suggested that TNRCC should consider adopting the federal rule 10 CFR Part 20. The commenter listed the following discrepancies between the federal 10 CFR Part 20 and TRCR Part 21: the stated scope of TRCR Part 21 excludes waste disposal, which is an integral part of 10 CFR Part 20, and use of the term "disposal" is omitted from some sections of Part 21; the definitions of terms given in TRCR Part 21 exclude a large fraction of those given in 10 CFR Part 20; certain entire sections of 10 CFR Part 20 have been omitted from TRCR Part 21, such as the units of radiation dose and radioactivity (which are important in fulfilling its recordkeeping and reporting requirements), and sections on implementation and provisions for technical specification changes; wording changes have been made in TRCR Part 21 which make some of its requirements stricter than those of 10 CFR Part 20; and the units required to be used in recordkeeping by TRCR Part 21 are not the same as those specified in 10 CFR Part 20.

TNRCC agrees with some of the observations made by the commenter, but disagrees with the suggestion that the federal 10 CFR Part 20 be adopted in lieu of TRCR Part 21. TNRCC must first point out that the NRC has promulgated certain minimum standards which must be adopted by all agreement states in order to demonstrate compatibility with the federal program. State programs for regulating radioactive substances must be equivalent to or more stringent than NRC's standards in order to maintain compatibility. The State of Texas has, as the commenter noted, elected to make certain aspects of its program more stringent than federal requirements. In part, the differences between the federal and the state rules are explainable by the fact that TDH has traditionally split the content of 10 CFR Part 20 over two different parts of its rules, TRCR Parts 11 and 21. Further, in its July 2, 1993, (18 TexReg 4300) amendment, TDH made a number of changes in the scope of TRCR Part 21 to limit it to areas within the statutory jurisdiction of TDH (by omitting portions related to disposal) and, in some instances, modified the language to make it stricter than in the federal rule. To abandon TRCR Parts 11 and 21 in favor of adopting by reference the federal rule would undermine the existing state program for regulation of radioactive substances. TNRCC's present adoption has added sections to the TDH rule (§336.6(a)-(f) (relating to TRCR Part 21 Amendments Regarding Waste Management)) which restore the disposal related sections that were deleted by the TDH in its July 2, 1993, adoption. The missing definitions are included in the amended §336.1(1) of this title (relating to

TRCR Part 11). Thus, TNRCC finds that this section as originally proposed and adopted herein is adequate for implementing this agency's authority.

Several commenters noted that the Memorandum of Understanding (MOU) attached to TRCR Part 21 is outdated and needs either repeal or substantial revision. The commenters expressed concern that TNRCC and TDH have not prepared the MOU required by the Texas Health and Safety Code, §401.414, that would clarify the division of responsibilities between the two agencies under the amended Texas Radiation Control Act (the Texas Health and Safety Code, Chapter 401).

TNRCC agrees that the MOU presently found in TRCR Part 21 is outdated. In fact, a number of Memoranda of Understanding between TDH, the Texas Water Commission, and the Railroad Commission of Texas concerning the regulation of radioactive materials will require revision in order to accurately implement the statutory changes recently effected by the legislature. Efforts are presently underway between the various agencies to revise the Memoranda of Understanding involving the regulation of radioactive materials.

A commenter stated that a provision in §336.6(b) of this title (relating to TRCR Part 21 Amendments Regarding Waste Management) includes an absolute requirement that the land authorized for burial of radioactive material must be owned by a government entity, whereas 10 CFR Part 20 provides for a waiver of this requirement. The commenter also noted that TRCR Part 21 addresses areas which are not in TNRCC's jurisdiction and includes sections and terms which are not in 10 CFR Part 20. This commenter also suggested that TNRCC should adopt the federal rules in lieu of TRCR Part 21.

For the reasons previously outlined, TNRCC does not agree with the recommendation that it adopt the federal rules by reference in lieu of the TRCR as modified to address source material recovery and disposal of radioactive substances. With respect to the comment about the proposed rule addressing areas outside TNRCC jurisdiction, §336.1 (relating to Adoption of Texas Regulations for the Control of Radiation) specifically states that only "those portions of the Texas Regulations for Control of Radiation (TRCR) which relate to the disposal of radioactive substances and source material recovery and processing, including the disposal of by-product material" are adopted by reference. As was stated in the preamble of the proposed rule (18 TexReg 7459), TNRCC has no intention of performing or enforcing any activity that is outside its jurisdiction.

One commenter noted that since TDH is continually amending its TRCR, TNRCC's adoption of the TRCR by reference is likely to cause misunderstandings within the regulated community, especially in performing licensee inspections, concerning the agency authority and the sections of the rules applicable to each agency. The commenter mentioned that such industries as uranium miners, radio-pharmaceutical companies, and waste processors and handlers are likely to have problems and confusion in deciding which

agency's authority and what parts of the same rules apply for their facility during an inspection. This will increase the burden on a licensee in following two sets of regulations.

TNRCC agrees that confusion may result with operators who have licenses with both TDH and TNRCC. However, TNRCC has no jurisdiction to regulate the routine operations of such entities as radio-pharmaceutical companies or waste processors or handlers. There are a limited number of licensees that have licenses issued by both TDH and TNRCC, where such a misunderstanding might be a possibility. Furthermore, §336.1 (relating to Adoption of Texas Regulations for the Control of Radiation) specifically states that only "those portions of the Texas Regulations for Control of Radiation (TRCR) which relate to the disposal of radioactive substances and source material recovery and processing, including the disposal of by-product material" are adopted by reference. Additionally, TNRCC believes that the version of a rule adopted by reference is the version in effect at the time of adoption. Without TNRCC action, the text of the adopted TRCR will remain intact regardless of subsequent amendments by TDH to its radiation rules.

The same commenter stated that the proposed §336.5 (relating to Amended TRCR Part 12 Fee Schedules) seems to adopt the TDH fees in a wholesale manner, including such items as fees for accelerators, bone mineral analyzers, decontamination services, eye applicators, fine leak testing devices, fixed multi-beam teletherapy devices, fluorescence x-ray devices, etc., which clearly do not lie under TNRCC jurisdiction. The commenter queried whether TNRCC intends to collect fees from these entities and suggested that the final rule should only include those portions of the fees that fall under TNRCC jurisdiction.

As stated in the preamble of the proposed rule, TNRCC has no intention of enforcing or collecting a fee from any entity for any activity that is outside TNRCC's jurisdiction. TNRCC agrees, however, that §336.5(a)(1) (relating to Amended TRCR Part 12 Fee Schedules) as proposed in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7459) contained entries for which the TNRCC has no jurisdiction to assess fees. Therefore, those entries have been deleted from the version adopted.

The same commenter noted that in adopting fees under §336.5, TNRCC does not cite any references to its studies that may have been done to estimate the actual or anticipated TNRCC program administration costs. It was suggested that the rules should make such a reference as a basis in proposing the fees as part of the rule.

The TNRCC's radiation program has just recently been established on a firm organizational basis to manage the expanded jurisdiction acquired by TNRCC effective September 1, 1993. An analysis of the anticipated program costs has been initiated. Pending completion of this analysis, TNRCC relies on TDH's information based on years of experience in fee recovery and expenditure tracking, which are both considered in its new TRCR Part 12, adopted in July 2, 1993, issue

of the *Texas Register* (18 TexReg 4314). TNRCC is adopting the applicable parts of the new TRCR Part 12 with the modifications indicated in §336.5(a)-(c) of this title (relating to Amended TRCR Part 12 Fee Schedules) as well as the change to §336.5(a)(1) (relating to Table of Annual Fees) printed in this adoption. The fees collected hereunder will be deposited in a newly-created Radioactive Substance Fee Fund (created by the Texas Health and Safety Code, §401.412(f)), which will thus provide for a proper accounting of the collected funds.

The same commenter suggested that since uranium mining companies will receive specific TNRCC licenses issued pursuant to 30 TAC Chapter 336, the new rules should state that the previously granted authorizations from the Texas Water Commission (now TNRCC) under other statutes, such as Texas Water Code, Chapter 26 (relating to surface discharge and irrigation permits) and Chapter 27 (relating to Underground Injection Control), will remain unaffected. The commenter suggested adding a statement in the rule clarifying that these other rules continue to exist and are not superseded by the TNRCC's amended radiation rules.

TNRCC confirms that permits issued under its rules pursuant to the Texas Health and Safety Code or the Texas Water Code will remain in full effect and are unaffected by the amended radiation rules. The statutes governing radioactive materials, wastewater discharges, solid waste, and underground injection control offer a comprehensive scheme for the regulation of entities falling under TNRCC scrutiny in the various pro-

grams affected. TNRCC feels that sufficient clarification exists in TNRCC rules concerning these areas that regulatory overlap should not be a cause for concern. Nothing in the amended radiation rules (30 TAC Chapter 336) affects TNRCC authorization of activities regulated outside the radioactive materials program. Therefore, no separate statement to that effect within the amended radiation rules (30 TAC Chapter 336) is required.

With respect to §336.5(b) of this title (relating to Amended TRCR Part 12 Fee Schedules), one commenter stated that it is improper to consolidate activities associated with by-product material along with those associated with naturally-occurring radioactive material (NORM) because of potentially different characteristics and regulatory requirements. The commenter also expressed concern that §336.6(b) of this title (relating to TRCR Part 21 Amendments Regarding Waste Management), appears to be in error in the restatement of TDH's past rule and that the last sentence could now be read to apply only to disposal in the manner authorized under §336.6(b) of this title.

With respect to the comment about the NORM disposal fees, the adopted rule adds fees for the category of NORM disposal to a table in §336.5(b) that also lists fees for uranium recovery facilities. The adopted rule restores annual fees for NORM disposal which were previously in the same table in TRCR Part 12.22, but which were deleted by TDH in its July 2, 1993, amendments of TRCR Part 12 (18 TexReg 4314). Inclusion of annual fees for NORM disposal in an existing table with annual fees for uranium recovery is a

matter of convenience and does not imply any consolidation of regulatory activities.

With respect to the comment about §336.6(b) of this title (relating to TRCR Part 21 Amendments Regarding Waste Management), this section restores the exact language of the previous TDH rule TRCR Part 21.302 (revision dated April 1986), which was deleted by TDH in its July 2, 1993, amendments of TRCR Part 21 (18 TexReg 4300). Section 336.6(b) does not change the substantive rules applicable under the former TRCR §21.302, but merely renumbers it to correspond with the numbering system employed by TDH when TRCR Part 21 was amended (18 TexReg 4300).

The amendments and new sections are adopted under the Texas Water Code, §5.103 and §5.105; and Texas Health and Safety Code, §401.412, which give TNRCC authority to adopt rules and establish minimum standards for the disposal of radioactive substances and recovery and processing of source material. The amendments and new sections implement the requirements Texas Health and Safety Code, Chapter 401, Subchapters A and C-K; and Texas Health and Safety Code, Chapter 402, Subchapters F and H.

§336.5. Amended TRCR Part 12 Fee Schedules.

(a) Section 12. 21. Schedule of Annual Fees for Radioactive Material Licenses.

(1) Table of Annual Fees.

Category of License

Annual Fee

Annual Fees:

- |  |             |
|--|-------------|
| 1. Mineral Recovery (Byproduct Material)   | \$15,835.00 |
| 2. Source Material   | \$905.00    |
| 3. Uranium Recovery (See §336.5(b) Schedule of Fees for Uranium Recovery Facility and NORM Disposal Licenses.) |             |
| 4. Other Specific License  | \$470.00    |
| 5. Disposal of NORM (See §336.5(b) Schedule of Fees for Uranium Recovery Facility and NORM Disposal Licenses.) |             |
| 6. Radioactive Waste Disposal Site (See §336.5(c) Schedule of Fees for Radioactive Waste Disposal Site.)       |             |

Disposal Licenses.

(b) Section 12.22. Schedule of Fees for Uranium Recovery Facility and NORM

(1) Table of annual fees.



Category	New Application	Operational Year		Restoration or Reclamation	
		Excluding Renewal	Renewal Year	Only	Post-Closure
1. Conventional	\$306,780	32,880	85,350	79,985	6,440
2. In Situ	180,500	27,645	59,180	28,585	x,xxx
3. Heap Leach	183,450	31,135	62,270	30,600	x,xxx
4. Disposal Only	169,400	24,200	59,100	59,000	x,xxx
5. NORM Disposal	169,400	24,200	59,100	59,000	x,xxx

(2) Adjustments to annual fees.

(A) If additional noncontiguous uranium recovery facility sites are authorized under the same license, the appropriate annual fee shall be increased by 20% for each additional site.

(B) Facilities proposing to conduct or conducting irrigation or surface discharge shall pay the following additional annual fee for each irrigation plot or surface discharge point:

New Application Only	Operational Year Excluding Renewal	Renewal Year	Restoration or Reclamation
\$6,175	3,355	4,295	2,685

(3) One-Time Fee Adjustments. For the addition of the following items listed after an Environmental Assessment has been completed on a facility, a one-time fee corresponding to the item shall be paid:

(A) New In Situ Uranium Recovery Facility-\$64,415;

(C) In Situ Satellite-\$64,415;

(B) In Situ Wellfield on Noncontiguous Property-\$64,415;

(D) Wellfield on Contiguous Property-\$25,765;

(E) Irrigation/Surface Discharge-\$6,175;

(F) Non-Vacuum Dryer-\$45,630.

(4) Interpretive Rules and Definitions.

(A) "Contiguous" properties are those locations adjacent to an existing licensed or permitted area.

(B) A "new in situ uranium recovery facility" is one that has one or more wellfields, an ion exchange uranium recovery facility, and facilities for concentrating yellowcake.

(C) "Renewal year" means the year of the expiration date of the license (and therefore the year in which renewal application is required).

(D) Once facilities under a license have entered restoration or reclamation, the appropriate annual fee will continue to be the restoration/reclamation annual fee (subject to adjustment for non-contiguous sites) without regard to whether the license term is subject to renewal.

(E) The one-time fee adjustment shall apply only to those facilities not licensed as of the effective date of these rules.

(F) "Post-closure" means the time period after which closure activities have been completed by the licensee and prior to transfer of land ownership of tailings disposal sites to the State of Texas or the United States of America and termination of the license.

(c) Section 12.23. Schedule of Fees for Radioactive Waste Disposal Site License.

(1) An application for a radioactive waste disposal site license pursuant to TRCR Part 45 shall be accompanied by a fee of \$415,000. This fee will cover agency costs for processing the application. The application fee may be paid in two equal installments. The first payment shall be made upon submission of the application and the balance shall be paid one calendar year later.

(2) An applicant shall submit an annual fee for the actual costs incurred by the agency for hearings associated with a radioactive waste disposal site application. Payment shall be made within 90 days following the date of invoice.

(3) A holder of a radioactive waste disposal site license shall submit an annual fee for the services received. This fee shall recover for the State of Texas the actual expenses arising from the regulatory activities associated with the license. Payment shall be made within 90 days following the date of invoice.

§336.6. TRCR Part 21 Amendments Regarding Waste Management.

(a) Section 21.1001. General Requirements.

(1) Unless otherwise exempted, a licensee shall transfer waste for disposal, discharge, or decay licensed material only:

(A) by transfer to an authorized recipient as provided in §21.1006 or in TRCR Parts 41, 43, 44, 45, or 46, or to the United States Department of Energy; or

(B) by decay in storage; or

(C) by release in effluents within the limits in TRCR, §21.301; or

(D) as authorized pursuant to TRCR, §21.302, §21.1003, §21.1004, or §21.1304, or subsection (b) of this section (relating to Section 21.1008. Method of Obtaining approval of Proposed Disposal Procedures).

(2) A person shall be specifically licensed to receive waste containing licensed material from other persons for:

(A) treatment prior to disposal; or

(B) treatment by incineration; or

(C) decay in storage; or

(D) disposal at a land disposal facility licensed pursuant to Part 45 of these rules; or

(E) storage until transferred to a storage or disposal facility authorized to receive the waste.

(b) Section 21.1008. Method of Obtaining Approval of Proposed Disposal Procedures. Any person may apply to the agency for approval of proposed procedures to dispose of radioactive material in a manner not otherwise authorized in this part. Each application shall include a description of the radioactive material involved, including the quantities and kinds of radioactive

material and the levels of radioactivity involved, and the proposed manner and conditions of disposal. The application shall also include an analysis and evaluation of pertinent information as to the nature of the environment, including topographical, geological, meteorological, and hydrological characteristics; usage of ground and surface waters in the general area; the nature and location of other potentially affected facilities; and procedures to be observed to minimize the risk of unexpected or hazardous exposures (ALARA). The agency will not approve any application for a license to receive radioactive material from other persons for disposal on land not owned by a State or the Federal Government.

(c) Section 21.1009. Disposal by Burial in Soil. No licensee shall dispose of radioactive material by burial in soil except as specifically approved by the agency pursuant to subsection (b) of this section (relating to Section 21.1008. Method of Obtaining Approval of Proposed Disposal Procedures) or TRCR, §21.1304.

(d) Section 21.1010. Disposal by Release Into Septic Tanks. No licensee shall discharge radioactive material into a septic tank system except as specifically approved by the agency pursuant to TRCR, §21.302 and subsection (b) of this section (relating to Section 21.1008. Method of Obtaining Approval of Proposed Disposal Procedures).

(e) Section 21.1011. Texas Department of Health (TDH) Inspection of Shipments of Waste. Each shipment of waste to a licensed land disposal facility in Texas shall be inspected by TDH prior to shipment. The waste shipper shall notify TDH no less than 72 hours prior to the scheduled shipment of the intent to transport waste to the licensed land disposal facility.

(f) Section 21.1302. Soil and Vegetation Contamination Limits.

(1) No licensee shall possess, receive, use, or transfer radioactive material in such a manner as to cause contamination of soil or vegetation in unrestricted areas, to the extent that the contamination exceeds, on a dry weight basis, the concentration limits specified in:

(A) TRCR, Appendix 21-I;

or

(B) the effluent concentrations in Appendix 21-B, Table III, with the units changed from uCi/ml to uCi/gm, for radionuclides not specified in TRCR Appendix 21-I or subsection (f)(3) of this section.

(2) Where combinations of radionuclides are involved, the sum of the ratios between the concentrations present

and the limits specified in paragraph (1) of this subsection shall not exceed one.

(3) Notwithstanding the limits imposed by paragraph (1) of this subsection, the concentration of radium-226 or radium-228 in soil averaged over any 100 square meters shall not exceed the background level by more than:

(A) 5 pCi/gm, averaged over the first 15 centimeters of soil below the surface; and

(B) 15 pCi/gm, averaged over 15 centimeter thick layers of soil more than 15 centimeters below the surface.

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 December 8, 1993.

TRD-9333285

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: December 29, 1993

Proposal publication date: October 26, 1993

For further information, please call: (512) 463-9069

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 57. Fisheries

##### Mussels and Clams

###### • 31 TAC §57.156, §57.158

The Texas Parks and Wildlife Department (Commission) in a regularly scheduled public hearing held August 28, 1993, adopts new §57.156 and §57.158, concerning the harvest of mussels and clams from public water without changes, to the proposed text as published in July 23, 1993, issue of the *Texas Register* (18 TexReg 4845). The new proclamation will provide the only regulations issued under the authority of Chapter 78 of the Parks and Wildlife Code. Regulations concerning freshwater mussels will remain essentially the same as those found in 31 TAC §65.80.

As a result of the passage of House Bill 2052 during the last legislative session all mussel and clam harvest, including size and limits, will be regulated under the Texas Parks and Wildlife Code, Chapter 78. Currently, they are regulated under Chapter 61 in the Statewide Hunting and Fishing Proclamation. The new mussel and clam proclamation is issued under the authority of Chapter 78.

The new rules are essentially the same as those found in §65.80, and delineate: bag, possession, and size limits for harvest of mussels and clams; devices, means, and methods that may be used in the harvest of mussels and clams; and seasons, times, and places where and when mussels and clams may be harvested.

No comments were received relative to the new regulations.

The new rules are adopted under Texas Parks and Wildlife Code, Chapter 78, which provides the Texas Parks and Wildlife Department (Commission) with authority to regulate taking, possession, purchase, and sale of mussels and clams.

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 December 10, 1993.

TRD-9333478

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Effective date: December 31, 1993

Proposal publication date: July 23, 1993

For further information, please call: 1-800-792-1112, Ext. 4433 or (512) 389-4433

#### Chapter 61. Design and Construction

##### Guidelines for Administration of Local and Water Conservation Funds Project

###### • 31 TAC §61.131

The Texas Parks and Wildlife Department (Commission) adopts an amendment to §61.131, concerning Guidelines for Administration of Local and Water Conservation Funds Project, with changes to the proposed text as published in the July 23, 1993, issue of the *Texas Register* (18 TexReg 4847). The amendment to §61.131 was in advertently submitted combined with the amendment to §61.121 in the Proposed Action Stage. These two amendments are now being submitted separately as required.

The rules are necessary to allow for the efficient administration of the grant programs noted and to take into account the creation of the Texas Recreation and Parks account established by acts of the Texas Legislature, 73rd Regular Session.

Section 61.131 re-adopts on a temporary basis §61.81 and §61.121 for administration of the Texas Recreation and Parks Account, and adopts the procedural guide for the Land and Water Conservation Fund, and guidelines for administration of the Texas Local Parks, Recreation and Open Space Fund projects by reference.

The new rules as proposed were presented to the Texas Parks and Wildlife Commission in its August 26, 1993, public hearing. No

comments were received from the publication of the proposed rules in the July 23, 1993, issue of the *Texas Register*. No comments were received from the public about the proposed rules at the August 26, 1993, Texas Parks and Wildlife Commission public hearing.

The amendment is adopted under the Texas Parks and Wildlife Code, §24.005 (as amended by Acts of the Texas Legislature, 73rd Regular Session), which provides that in establishing the program of grants under this section, the department shall adopt rules and regulations for grant assistance.

**§61.131. Policy.** It is the Texas Parks and Wildlife Commission policy that the executive director shall administer local projects in accord with the following guidelines with interpretation of intent to be made to provide the greatest number of outdoor recreational opportunities for Texas in accord with priorities of the Texas Outdoor Recreation Plan. In keeping with this policy, local projects will not be approved from both the Texas Local Parks, Recreation, and Open Space Fund and the Federal Land and Water Conservation Fund Program unless extraordinary circumstances dictate that high priority public needs will not be met without the full or partial funding of both programs.

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

(3) Section 61.81 of this title (relating to Application Procedures), the procedural guide for Land and Water Conservation Fund Program, is adopted by reference for the Texas Recreation and Parks Account for the period September 1, 1993-September 1, 1994. Copies may be obtained from Texas Parks and Wildlife Department, Grants Program, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4948.

(4) Section 61.121 of this title (relating to Policy), guidelines for administration of Local Land and Water Conservation Fund Program and guidelines for administration of Texas Local Parks, Recreation, and Open Space Fund projects are adopted by reference for the Texas Recreation and Parks Account for the period of September 1, 1993-September 1, 1994. Copies may be obtained from Texas Parks and Wildlife Department, Grants Program, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4948.

This agency hereby certifies that the 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 December 10, 1993.

TRD-9333477

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Effective date: December 31, 1993

Proposal publication date: July 23, 1993  
For further information, please call: 1 (800)  
792-1112, Ext. 4433 or (512) 369-4433

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**TITLE 34. PUBLIC FI-  
NANCE**  
**Part VIII. State Depository  
Board**

**Chapter 171. Collateral  
Transactions**

• **34 TAC §171.1**

The Texas State Depository Board adopts an amendment to §171.1, concerning the deposit of security collateral by financial institutions designated as state depositories without changes to the proposed text as published in the August 27, 1993, issue of the *Texas Register* (18 TexReg 5720).

In the past it has been difficult for the Texas State Treasury to obtain a reliable price for certain securities. The amendment will facilitate the ongoing repricing of securities which are deemed acceptable by the Texas State Depository Board as collateral for state funds.

The amendment clarifies what securities are acceptable as collateral for state funds.

No comments were received regarding adoption of the amendment

The amendment is adopted under §404.013 the Texas Government Code, which authorizes the State Depository Board to adopt rules governing the establishment and conduct of state depositories.

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 December 10, 1993.

TRD-9333456 Susan D. Albers  
General Counsel  
State Depository Board

Effective date: December 31, 1993

Proposal publication date: August 27, 1993

For further information, please call: (512)  
463-5971

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**TITLE 40. SOCIAL SER-  
VICES AND ASSIS-  
TANCE**

**Part I. Texas Department  
of Human Services**

**Chapter 4. Medicaid Programs-  
Children and Pregnant  
Women**

**Eligibility Requirements**

• **40 TAC §4.1006**

The Texas Department of Human Services (DHS) adopts an amendment to §4. 1006, concerning requirements for application, in its Medicaid Programs-Children and Pregnant Women Program rule chapter. The amendment is adopted without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8170).

The justification for the amendment is to eliminate sanctions against pregnant women who fail to comply with child support requirements, until the end of their pregnancy.

The amendment will function by ensuring that needy pregnant women receive the prenatal care they need.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §22.001 and §32.040.

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 December 10, 1993.

TRD-9333455 Nancy Murphy  
Liaison  
Texas Department of  
Human Services

Effective date: January 1, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512)  
450-3765

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**Chapter 19. Long-Term Care  
Nursing-Facility  
Requirements for Licensure  
and Medicaid Certification**

**Subchapter S. Reimbursement  
Methodology for Nursing  
Facilities**

• **40 TAC §19.1807**

The Texas Department of Human Services (DHS) adopts an amendment to §19. 1807, concerning rate-setting methodology, in its Long-Term Care Nursing Facility Requirements. The amendment is adopted without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8172).

The purpose for the amendment is to delete the experimental pediatric care reimbursement class. The only provider operating a pediatric nursing facility has asked to withdraw from participation and has returned to the standard nursing facility reimbursement class. DHS foresees no reason to maintain the pediatric class.

The amendment will function by eliminating an obsolete, experimental reimbursement class and retaining the standard reimbursement class.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §32.028 and §32.029.

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 December 10, 1993.

TRD-9333354 Nancy Murphy  
Liaison  
Texas Department of  
Human Services

Effective date: January 1, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512)  
450-3765

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## Part II. Texas Rehabilitation Commission

### Chapter 101. General Rules

#### • 40 TAC §101.11

The Texas Rehabilitation Commission adopts an amendment to §101.11, concerning general rules, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8182).

The amendment to this section and the adoption of new Chapter 104, Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official, clarify the policy and procedures with regard to protests and appeals and applicant and client hearings.

The section adopts by reference TRC APPM 9, Protest and Appeal, which sets forth the Commission policy and procedure with regard to protests and appeals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, §111.018, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purpose of this chapter.

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 December 6, 1993.

TRD-9333286

William B. Churchill  
Assistant Commissioner for  
Legal Services  
Texas Rehabilitation  
Commission

Effective date: December 29, 1993

Proposal publication date: November 9, 1993

For further information, please call. (512) 483-4050

### Chapter 104. Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official

#### • 40 TAC §§104.1-104.8

The Texas Rehabilitation Commission adopts new §§104.1-104.8, concerning information and formal appeals by applicants/clients of

decisions by a rehabilitation counselor or agency official. Section 104.6 is adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8182). Sections 104.1-104.5, 104.7-104.8 are adopted without changes and will not be republished.

The new rules are adopted to comply with the 1992 and 1993 amendments to the Rehabilitation Act of 1973 and 34 Code of Federal Regulation §361.48. Section 104.6(b) is changed from 30 days to 20 days in order to comply with the federal regulations.

The new sections set forth the substantive procedural rules governing applicant and client hearings before the Commission.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Human Resources Code, §111.018, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purpose of this chapter.

#### §104.6. Action by the Commissioner.

(a) The Commissioner cannot delegate the responsibility for making any final Commission decision to any other officer or employee of the Commission.

(b) Within 20 days of the mailing of the IHO's decision, the Commissioner will decide whether or not to formally review the decision by studying the decision and the official case record.

(1) If the Commission decides not to formally review the IHO's decision, the decision of the IHO becomes the final Commission decision, and the Commissioner will issue an order affirming the decision of the IHO.

(2) If the Commissioner decides to formally review the IHO's decision, written notice of this decision will be sent to the Appellant by certified mail, return receipt requested.

(3) The parties will then have 15 days from the date the notice that the Commissioner has decided to review the IHO's decision is mailed by the Inquiries and Hearings Unit to submit any additional relevant evidence.

(4) Within 30 days of the mailing of notice of intent to review the IHO's decision, the Commissioner shall make a final decision and provide a full report to all parties in writing of that decision, including the findings and grounds for the decision.

(c) The Commissioner's decision to review the IHO's decision will be based on the following standards of view.

(1) The Commissioner may not overturn nor modify a decision of an IHO, or part of a decision, that supports the position of the Appellant unless the Commissioner concludes, based on clear and convincing evidence, that the decision of the IHO is clearly, based on clear and convincing evidence, that the decision of the IHO is clearly erroneous on the basis of being contrary to federal or state law, including policy.

(2) Review shall include all applicable laws, rules, regulations, policies, and procedures.

(3) Review may be made on all questions of law, fact and written policy and procedure.

(4) Review may result in affirming the decision of the IHO in whole or in part of reversing or remanding the case to the IHO for further proceedings.

(5) Review may result in reversing or remanding the decision of the IHO when the record of the hearing or decision contains any one or more of the following, and the decision is found to be:

(A) in violation of constitutional, statutory, regulatory, or written policy provisions;

(B) in excess of the statutory authority of the Commission;

(C) made upon unlawful procedure;

(D) affected by other error of law, regulation, or written policy;

(E) not reasonably supported by the evidence; or

(F) arbitrary, capricious, or characterized by abuse of or clearly unwarranted exercise of discretion.

(6) When none of the conditions in paragraph (5) of this subsection above are present in the record of the hearing or the decision, review shall result in affirming the decision of the IHO.

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 December 6, 1993.

TRD-9333287

William B. Churchill  
Assistant Commissioner for  
Legal Services  
Texas Rehabilitation  
Commission

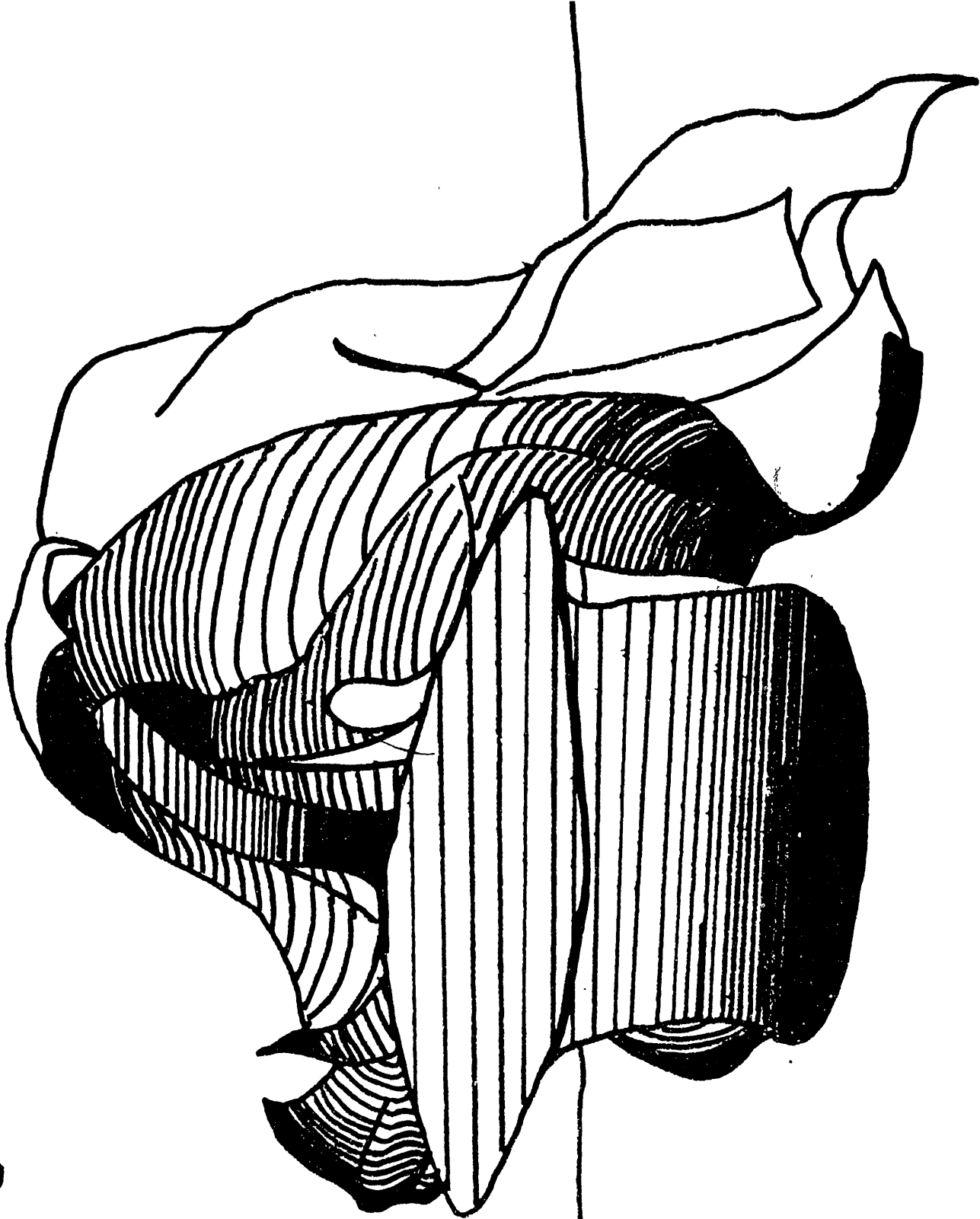
Effective date: December 29, 1993

Proposal publication date: November 9, 1993

For further information, please call: (512)  
483-4050

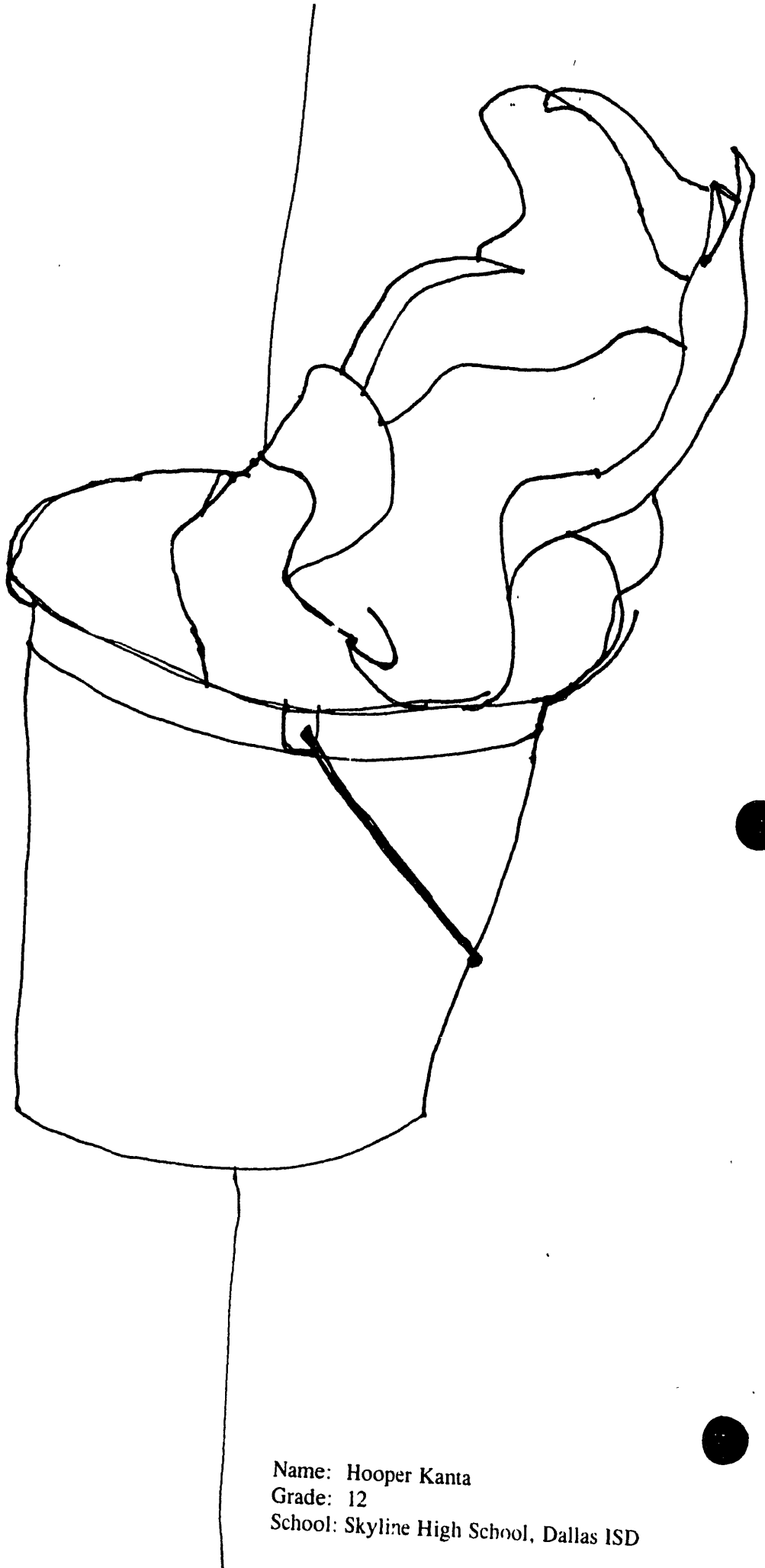


Contour Drawing 9-23-91



Name: Hooper Kanta  
Grade: 12  
School: Skyline High School, Dallas ISD

Contour Drawing 8-25-93  
Skill - Life



Name: Hooper Kanta  
Grade: 12  
School: Skyline High School, Dallas ISD



# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the 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 Bond Review Board

Friday, December 17, 1993, 10:00 a.m.

300 West 15th Street, Clements Building,  
Fifth Floor, Committee Room Five

Austin

According to the agenda summary, the Texas Bond Review Board call to order; approval of minutes; consideration of proposed issues; other business and adjourn.

Contact: Albert L. Bacarisse, 300 West 15th, Suite 409, Austin, Texas 78701, (512) 463-1741

Filed: December 9, 1993, 2:35 p.m.

TRD-9333386

## Coastal Coordination Council

Friday, December 17, 1993, 9:00 a.m.

300 West 15th Street, William P. Clements Building, Senate Committee Room One, Fifth Floor

Austin

According to the complete agenda, the Coastal Coordination Council call to order and opening remarks; approval of minutes of the September 2, 1993 meeting; presentation on the Trans-Texas Water Program and request for participation on the Policy Management Committee; presentation on the Galveston Bay National Estuary Program; discussion of, and request for guidance on Coastal Management Program (CMP) consistency review process; discussion on draft CMP goals and policies; public comment period; and adjournment.

Contact: Janet L. Fatheree, 1700 North Congress Avenue, Room 831, Austin, Texas 78701

Filed: December 9, 1993, 3:59 p.m.

TRD-9333419

## Texas Employment Commission

Tuesday, December 21, 1993, 9:00 a.m.

101 East 15th Street, Texas Employment Commission Building, Room 644

Austin

According to the agenda summary, the Texas Employment Commission prior meeting notes staff reports; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission docket number 51; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291

Filed: December 13, 1993, 4:05 p.m.

TRD-9333627

## Texas High-Speed Rail Authority

Friday, December 17, 1993, 10:00 a.m.

125 East 11th Street, D. C. Greer Building, Public Hearing Room

Austin

According to the agenda summary, the Board of Directors called to order; November 5, 1993 meeting minutes; Citizen Communication (fifteen minutes); report from Woodward-Clyde Consultants on environmental impact statement; executive session; pursuant to the provisions of Texas Revised Civil Statutes Annotated, §2(e), Article

6252-17; deliberation and action on, if necessary, matters discussed in Executive Session; Report from the Texas TGV Corporation; consideration of proposal by franchise to satisfy \$170 million equity financing commitment; additional citizen communication.

Contact: Allan Rutter, 823 Congress Avenue, #1502, Austin, Texas 78701, (512) 478-5484

Filed: December 9, 1993, 4:23 p.m.

TRD-9333424

## Texas Department of Human Services

Monday, December 20, 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 November 19, 1993, meeting; chairman's comments and announcements; changes to the Medical Necessity Rules in the LTC/NFR to Licensure and Medicaid Certification; calendar year 1994 rates for the nursing facility, hospice-nursing facilities, swing bed and Bienvivir Waiver Programs; agency mission statement; and commissioner's report.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3048.

Filed: December 10, 1993, 1:31 p.m.

TRD-9333493

## Texas Department of Insurance

Monday, December 20, 1993, 9:00 a.m.  
333 Guadalupe Street, Tower Two, Fourth Floor

Austin

According to the agenda summary, the Texas Department of Insurance to consider whether disciplinary action should be taken against The Continental Insurance Company, New York, New York, which holds a Certificate of Authority issued by the Texas Department of Insurance.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527

Filed: December 10, 1993, 2:18 p.m.

TRD-9333502

Monday, December 21, 1993, 9:00 a.m.  
333 Guadalupe Street, Tower Two, Fourth Floor

Austin

According to the agenda summary, the Texas Department of Insurance request by servicing companies for a hearing on the Indemnification of full compromises and settlement costs associated with the standard financial litigation case.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527

Filed: December 10, 1993, 2:18 p.m.

TRD-9333503

## Commission on Jail Standards

Thursday, December 16, 1993, 2:00 p.m.  
John H. Reagan Building, Room 103, Congress Avenue and West 15th Street

Austin

Revised

According to the agenda summary, the Commission on Jail Standards call to order; roll call of members; reading and approval of minutes of last regular meeting; executive session; old business; Bexar county; public comments; and adjourn.

The emergency status was necessary because unexpected development requiring the immediate attention of the commission.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505

Filed: December 13, 1993, 11:21 a.m.

TRD-9333607

## Texas Department of Licensing and Regulation

Thursday, December 30, 1993, 9:00 a.m.  
920 Colorado, E. O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Inspections and Investigations Talent Agencies will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Pete Strickler doing business as The Talent Place for violation of Texas Revised Civil Statutes Annotated Article 5221a-9, 16 T.A.C., Chapter 78, Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: December 13, 1993, 12:13 p.m.

TRD-9333608

## Texas State Board of Medical Examiners

Wednesday, December 15, 1993, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

The emergency status was necessary because information has come to the attention of the agency and requires prompt consideration.

According to the complete agenda, the Hearings Division termination requests Rodney Norman Dotson, M.D., Carrizo Springs, Texas; David A. Katerndahl, M.D. San Antonio, Texas; and modification requests Douglas Hall Rankin, M.D., San Antonio, Texas; Dennis Alan Uldrich, M.D., San Antonio, Texas; and Michael H. McCallum, M.D., New Braunfels, Texas. Executive session under authority of the Open Meetings Act, § 551.071 of the Government Code, and Article 4495b, §§2.07(b), 2.09(o), Texas Revised Civil Statutes, regarding pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728

Filed: December 10, 1993, 10:34 a.m.

TRD-9333474

## Texas Natural Resource Conservation Commission

Wednesday, January 5, 1994, 4:00 p.m.  
6 Main Street, City Hall, City Auditorium

Canadian

According to the agenda summary, the Texas Natural Resource Conservation Commission on an application by the city of Canadian for proposed permit number MSW40026 authorizing the registration, construction and operation of a Type V municipal solid waste management transfer station. The waste management facility is to be located on 6.236 acre site approximately one mile south of the city of Canadian, directly north of and adjacent to Airport Road and approximately 800 feet to the west of the intersection of Airport Road and United States Highway 60/83 in Hemphill county Texas.

Contact: Ann Scudday or Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 908-6687 or (512) 908-6688.

Filed: December 9, 1993, 2:20 p.m.

TRD-9333380

Thursday, January 6, 1994, 10:00 a.m.  
409 Broadway, City Hall, Council Meeting Room

Silverton

According to the agenda summary, the Texas Natural Resource Conservation Commission on an application by the city of Silverton for proposed permit number MSW40022 authorizing the registration, construction and operation of a Type V municipal solid waste management transfer station. The waste management facility is to be located on a 22 acre site approximately seven miles east of Silverton, 2500 feet north of State Highway 86 and 6000 feet south of State Highway 256 in Briscoe county Texas.

Contact: Ann Scudday or Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 908-6687 or (512) 908-6688.

Filed: December 9, 1993, 2:21 p.m.

TRD-9333381

Thursday, January 6, 1994, 3:30 p.m.  
505 North Avenue Q, Sheraton Inn, Mesa Room

Lubbock

According to the agenda summary, the Texas Natural Resource Conservation Commission on an application by Innovex, Inc. for proposed permit number msw2230 authorizing a Type V (grease and grit trap waste processing) permit to receive municipal solid waste. The waste management facility is to be located on a 1.14 acre site at 501 North Avenue K in Lubbock, Lubbock county Texas.

Contact: Ann Scudday or Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 908-6687 or (512) 908-6688.

Filed: December 9, 1993, 2:43 p.m.

TRD-9333389

**Friday, December 17, 1993, 4:30 p.m.**  
1700 North Congress Avenue, Room 138  
Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will meet in executive session under a §551.0 of the Open Meetings Act to discuss a settlement agreement in Cau Number 91-CI-14862, Edwards Underground Water District, et al v. "Living Waters" Artesian Springs, Limited et al, in Bexar county district court, 57th Judicial District.

**Contact:** Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905

**Filed:** December 9, 1993, 5:40 p.m.

TRD-9333432

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**Texas Board of Pardons and Paroles**

**Monday-Wednesday, December 20-22, 1993, 1:30 p.m.**

1550 East Palestine, Suite 100  
Palestine

According to the agenda summary, the Parole Board Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will meet at 1:30 p.m., Monday, December 20, through Wednesday, December 22, 1993. The panel(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

**Filed:** December 10, 1993, 9:31 a.m.

TRD-9333441

**Monday-Thursday, December 20-23, 1993, 1:30 p.m.**

2503 Lake Road, Suite Two  
Huntsville

According to the agenda summary, the Parole Board Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will meet at 1:30 p.m., Monday, December 20, through Thursday, December 23, 1993. The panel(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with

appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

**Filed:** December 10, 1993, 9:31 a.m.

TRD-9333440

**Wednesday, December 22, 1993, 9:00 a.m.**

Route 5, Box 258-A  
Gatesville

According to the agenda summary, the Parole Board Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will meet at Wednesday, December 22, at 9:00 a.m. The Panel(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

**Filed:** December 10, 1993, 9:30 a.m.

TRD-9333438

**Thursday, December 23, 1993, 9:30 a.m.**

1550 East Palestine, Suite 100  
Palestine

According to the agenda summary, the Parole Board Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will meet at 9:30 a.m. Thursday, December 23. The Panel(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

**Filed:** December 10, 1993, 9:31 a.m.

TRD-9333442

**Thursday, December 23, 1993, 9:30 a.m.**

1212 North Velasco, Suite 201  
Angleton

According to the agenda summary, the Parole Board Panel(s) of the Board of Pardons and Paroles composed of three board member(s) will meet at 9:30 a.m. Thursday, December 23. The Panel(s) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

**Filed:** December 10, 1993, 9:31 a.m.

TRD-9333439

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**Public Utility Commission of Texas**

**Monday, December 20, 1993, 9:00 a.m.**

7800 Shoal Creek Boulevard  
Austin

According to the agenda summary, the Administrative will discuss: reports, discussion and action of staff member to chair staff subcommittee on strategic issues of NARUC; request for information on Telecommunications Clearinghouse; understanding with Office of State/Federal Relations and Comptroller; possible elimination of economic and regulatory policy (ERP) division, appropriate function and staffing if retained, and posting of ERP division director position if necessary; interim legislative committees and/or Sunset Commission; procedures re: job descriptions and evaluations of certain staff; capital for a day in Clear Lake City; South Texas trip; Gulf States Utilities Company/Entergy Services, Inc. merger at FERC; EPEC bankruptcy case in U.S. bankruptcy court; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** December 10, 1993, 3:48 p.m.

TRD-9333567

**Tuesday, December 21, 1993, 1:30 p.m.**

7800 Shoal Creek Boulevard  
Austin

According to the complete agenda, the Hearings Division 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: December 9, 1993, 4:14 p.m.

TRD-9333422

Tuesday, December 28, 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 12504; application of Alltel Texas, Inc. for authority to locate and maintain records outside the State of Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 13, 1993, 2:39 p.m.

TRD-9333618

Thursday, February 3, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits which has been rescheduled in Docket Number 12009-Application of GTE Southwest, Inc. and Contel of Texas, Inc. to provide new services and equipment in its respective emergency services 9-1-1 tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 10, 1993, 3:49 p.m.

TRD-9333571

Wednesday, February 16, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12470-Application of Lea County Electric Cooperative, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 10, 1993, 11:27 a.m.

TRD-9333490

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## Texas Racing Commission

Monday, December 20, 1993, 3:30 p.m.

John H. Reagan Building, Room 101, 105 West 15th Street

Austin

According to the complete agenda, the Horse Racing Section call to order; roll call; executive session pursuant to the Government Code, §551.017, to consult with Commission attorneys regarding pending litigation with Trinity Meadows and to consider proposed settlement agreement; vote on agreement in open session; consideration of and action on proposed final order in TxRC Number 91-R1-26; consideration of and action of 1994 live race dates for Trinity Meadows Raceway; old and new business; and adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461

Filed: December 10, 1993, 4:47 p.m.

TRD-9333577

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## Railroad Commission of Texas

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress, First Floor, Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the personnel division director's report on division administrations, budget, procedures and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel. The following matters will be taken for consideration and/or decision by the commission; Commission budget, fiscal, administrative or procedural matters, strategic planning; personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P. O. Box 12967, Austin, Texas 78711, (512) 463-6981.

Filed: December 10, 1993, 10:55 a.m.

TRD-9333482

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress, First Floor, Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on agency budget, fiscal and administrative matters, and the administrative ser-

vices division director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711, (512) 463-7257.

Filed: December 10, 1993, 10:55 a.m.

TRD-9333483

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress, First Floor, Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on division director's report on budget, personnel and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711, (512) 463-7110.

Filed: December 10, 1993, 10:55 a.m.

TRD-9333484

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress, First Floor, Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the automatic data processing division director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: December 10, 1993, 10:55 a.m.

TRD-9333485

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor, Conference Room 1-111

Austin

According to the agenda summary, the Railroad Commission of Texas consideration of category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: December 10, 1993, 10:55 a.m.

TRD-9333486

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor, Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the office of information services

director's report on division administration, budget, procedures and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: December 10, 1993, 10:56 a.m.

TRD-9333487

### Texas Real Estate Commission

Monday, December 20, 1993, 9:30 a.m.

1101 Camino La Costa, TREC Headquarters Office, Conference Room 235, Second Floor

Austin

According to the agenda summary, the Texas Real Estate Commission will consider and possibly act on staff reports; committee reports; discussion of proposed amendments to 22 TAC §§543.4, concerning forms used to register or the registration of timeshare properties; discussion of draft contracts and addenda developed by the Texas Real Estate Broker-Lawyer Committee and possible action to approve distribution of drafts for informal comments; possible action to approve residential condominium contract forms and resale certificate for voluntary use; discussion and possible action to approve MCE course or providers and other courses and providers; designation of hearings examiner in contested cases involving inspectors; possible action to approve revised mission statement; executive session concerning litigation and selection of assistant administrator pursuant to Texas Government Code, §§51.071 and §551.074; selection of assistant administrator; authorization of recovery fund payments; complaint information; motion for rehearing concerning Hearing Number 93-61-930171, Hearing Number 93-64-930467, and Hearing Number 93-69-930825. For AdA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900

Filed: December 9, 1993, 2:21 p.m.

TRD-9333382

### Council on Sex Offender Treatment

Friday, December 17, 1993, 9:00 a.m.

1701 North Congress Avenue

Austin

According to the complete agenda, the

Interagency Advisory Committee call to order; Diane Morris, Assistant Attorney General, discussion of possible action on the implementation of Senate Bill 1130; committees of the board; joint board meeting structure; committees of each body; bylaws; discussion on the Open Meetings Act; recess; report on the interagency advisory committee's deliberation over Senate Bill 1130 and report on the council on Sex Offender Treatment's deliberation over Senate Bill 1130; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711

Filed: December 9, 1993, 10:21 a.m.

TRD-9333343

Friday, December 17, 1993, 10:30 a.m.

1701 North Congress Avenue

Austin

According to the complete agenda, the Interagency Advisory Committee call to order; discussion and possible action on the implementation of Senate Bill 1130; discussion and possible action on the appointment, employment and duties of the executive director, possibly convening in executive session; pursuant to § 551.074 of the Government Code; discussion and possible action on rules for the registry; discussion and possible action on subcommittee structure and membership; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711, (512) 463-2323

Filed: December 9, 1993, 10:20 a.m.

TRD-9333341

Friday, December 17, 1993, 10:30 a.m.

1701 North Congress Avenue, Room 1.100

Austin

According to the complete agenda, the Interagency Advisory Committee Meeting called to order; election of the chair; discussion and possible action on the implementation of Senate Bill 1130; discussion and possible action on subcommittee structure and membership and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711, (512) 463-2323

Filed: December 9, 1993, 10:21

TRD-9333342

### Stephen F. Austin Bicentennial Celebration Commission

Wednesday, December 22, 1993, 10:00 a.m.

100 East Cedar

Angleton

According to the complete agenda, the Board reading of the minutes of the previous meeting(s); review of commission activities; and preparation of final report to the Secretary of State.

Contact: Robert Handy, 100 East Cedar, Angleton, Texas 77515, (409) 849-5711, Ext. 1208.

Filed: December 9, 1993, 4:57 p.m.

TRD-9333429

### Texas Tech University

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Development Committee/Board of Regents approve September 30, 1993 committee meeting minutes and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:57 a.m.

TRD-9333355

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Research Committee/Board of Regents approve September 30, 1993 committee meeting minutes and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:57 a.m.

TRD-9333354

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Campus and Building Committee/Board of Regents approve September 30, 1993 committee meeting minutes. Consider authorization for the president to enter into a contract between the city of Lubbock and Texas Tech University to connect the Lubbock Coliseum to the University underground utility system and consideration of an agreement between the university and city of Lubbock to lease areas of the Texas Tech University; International Cultural Center and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 10:57 a.m.

TRD-9333353

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Finance and Administration Committee/Board of Regents approve September 30, 1993, committee meeting minutes. Consider revisions to Board of Regent's policies 04.04, Budget Rules and Procedures and 04.05, Contracting Policies and Procedures and budget adjustments for the period September 1, 1993 through October 31, 1993 and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 9:00 a.m.

TRD-9333352

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Academic and Student Affairs Committee/Board of Regents approve September 30, 1993 committee meeting minutes. Consider finding of fact regarding the appointment of an employee to another position of honor, trust or profit; ratification of administrative actions related to academic and student affairs; change the name of the International Center for Textile Research and Development to the International Textile Center; faculty development leave and conferral of degrees for December 18, 1993; commencement and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:56 a.m.

TRD-9333351

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Development Committee/Board of Regents approve September 30, 1993 committee meeting minutes. Consider appointment of members to the Board of Directors of the Texas Tech Medical Foundation and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:45 a.m.

TRD-9333349

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Research Committee/Board of Regents approve September 30, 1993 committee meeting minutes and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:56 a.m.

TRD-9333348

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Finance and Administration/Board of Regents approve September 30, 1993 committee meeting minutes. Consider revisions to Board of Regent's Policies 04.04, Budget Rules and Procedures and 04.05, Contracting Policies and Procedures; approval of the establishment of a quasi-endowment for the Maria Elena Acevado Flood Scholarship Endowment; and budget adjustments for the period September 1, 1993 to October 31, 1993, with salary adjustment to be effective January 1, 1994 and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:54 a.m.

TRD-9333347

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

According to the complete agenda, the Academic, Clinical and Student Affairs Committee/Board of Regents approve September 30, 1993 committee meeting minutes. Consider revision of Texas Tech University Health Sciences Center Mission Statement; approval of the Interagency Cooperation Contract and all related subcontracts between Texas Tech University Health Sciences Center and Texas Department of Criminal Justice (Huntsville, Texas) to provide medical care to inmates in 22 prison units; approval of the agreement between Texas Tech University Health Sciences Center and El Paso County Hospital District

doing business as R. E. Thomason General Hospital to provide various medical and administrative services; approval of the amendment to the agreement between Texas Tech University Health Sciences Center and the City of El Paso, doing business as R. E. Thomason General Hospital (El Paso, Texas) to provide emergency medical services; approval to renew the agreement between Texas Tech University Health Sciences Center and Life Management Center for Mental Health and Mental Retardation Services (El Paso, Texas) to provide psychiatric crisis stabilization to clients of the center; approval of the agreement between Texas Tech University Health Sciences Center and Veterans Affairs Medical Center (Amarillo, Texas) to fund residents from Amarillo, Lubbock, and El Paso who rotate to the facility in Amarillo, and Lubbock residents who rotate to the Veterans Hospital in Big Spring, Texas; approval of the agreement between Texas Tech University Health Sciences Center and Midland county hospital district (Midland, Texas) for resident and faculty support; granting of academic tenure with appointment; and ratification of conferral of degrees for December 18, 1993, commencement, and faculty development leave and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:55 a.m.

TRD-9333346

Thursday, December 16, 1993, 1:30 p.m.

Health Sciences Center Building, Room 2B152, Campus

Lubbock

Revised

According to the complete agenda, the Development Committee/Board of Regents approve September 30, 1993 committee meeting minutes. Consider acceptance of gift in kind with value in excess of \$25,000 and reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 2:10 p.m.

TRD-9333377

Friday, December 17, 1993, 9:00 a.m.

Administration Building, Board Suite, Campus

Lubbock

According to the agenda summary, the Board of Regents minutes; president's report; academic, clinical and student affairs; finance and administration and development.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:55 a.m.

TRD-9333345

Friday, December 17, 1993, 9:40 a.m.

Administration Building, Board Suite, Campus

Lubbock

According to the agenda summary, the Board of Regents minutes; academic and student affairs; finance and administration; campus and building; and development.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 10:56 a.m.

TRD-9333350

Friday, December 17, 1993, 9:40 a.m.

Administration Building, Board Suite, Campus

Lubbock

Revised

According to the agenda summary, the Board of Regents minutes, academic and student affairs; finance and administration; campus building; and development. (Revision added VI.1).

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806)742-2161

Filed: December 9, 1993, 2:09 p.m.

TRD-9333376

### Texas Turnpike Authority

Thursday, December 16, 1993, 10:00 a.m.

14901 Dallas Parkway, Dallas Marriott Quorum

Dallas

Revised

The emergency status was necessary because immediate need to implement interagency agreement which will assist the authority to begin Total Quality Management.

According to the agenda summary, the Board of Directors revised agenda includes the addition of item number 24 to consider an Interagency Agreement with Southwest Texas State University. The revised agenda is attached.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200

Filed: December 9, 1993, 4:27 p.m.

TRD-9333425

### Stephen F. Austin State University

Friday, December 17, 1993, 10:00 a.m.

Stephen F. Austin Campus, Austin Building, Room 307

Nacogdoches

According to the complete agenda, the Board of Regents selection of fund manager; and consideration Stephen F. Austin 98 discussion draft two.

Contact: Dr. Dan D. Angel, P.O. Box 6078, SFA Station, Nacogdoches, Texas 75962, (409) 568-2201

Filed: December 11, 1993, 9:47 a.m.

TRD-9333633

### University of North Texas

Tuesday, December 14, 1993, 11:30 a.m.

Brook Hollow Golf Club, 8301 Harry Hines Dallas

According to the complete agenda, the Board of Regents, Advancement Committee discussed Capital Campaign-Phase II.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: December 10, 1993, 3:49 p.m.

TRD-9333569

### University of Texas Health Science Center at San Antonio

Wednesday, December 22, 1993, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A in the Medical School

San Antonio

According to the agenda summary, the Institutional Animal Care and Use Committee approval of minutes; protocols for review; subcommittee reports; and other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (512) 567-3717

Filed: December 13, 1993, 3:05 p.m.

TRD-9333625

### University of Texas MD Anderson Cancer Center

Tuesday, December 14, 1993, 9:00 a.m.

1515 Holcombe Boulevard, Seventh Floor, Conference Room AW7.707

Houston

According to the agenda summary, the Institutional Animal Care and Use Committee review of protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, 1515 Holcombe Boulevard, Box 101, Houston, Texas 77030, (713) 792-3220

Filed: December 9, 1993, 3:45 p.m.

TRD-933341

### Regional Meetings

Meetings Filed December 8, 1993

The Greater Austin-San Antonio Corridor Council, Inc. Executive Council met at the Corridor Council Offices, 304 C.M. Allen Parkway, San Marcos, December 10, 1993, at 10:00 a.m. Information may be obtained from Emma Vasquez, P.O. Box 1618, San Marcos, Texas 78667-1618, (512) 245-2535. TRD-9333242.

The Greater Austin-San Antonio Corridor Council, Inc. Board of Directors met at the Corridor Council Offices, 304 C.M. Allen Parkway, San Marcos, December 10, 1993, at 11:30 a.m. Information may be obtained from Emma Vasquez, P.O. Box 1618, San Marcos, Texas 78667-1618, (512) 245-2535. TRD-9333243.

Meetings Filed December 9, 1993

The Alamo Area Council of Governments Area Judges met at the Hyatt Hill Country Resort, San Antonio, December 14, 1993, at 9:00 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9333388.

The Alamo Area Council of Governments Board of Directors met at the Hyatt Hill Country Resort, San Antonio, December 14, 1993, at 10:00 a.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9333387.

The Austin Transportation Study Policy Advisory Committee met at 26th and Red River, Room 2.102, Joe C. Thompson Conference Center, Austin, December 14, 1993, at 6:00 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78767, (512) 499-6441. TRD-9333375.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, December 15, 1993, at 7:30 p.m. Information may be obtained from

Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9333426.

The Bi-County WSC met at the Bi-County WSC Office, FM Road #2254, Pittsburg, December 14, 1993, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9333371.

The Bosque Higher Education Authority Incorporated Board of Directors, 2600 Washington Avenue, Waco, December 17, 1993, at 10:45 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9333565.

The Bosque Higher Education Authority Incorporated Board of Directors, 2600 Washington Avenue, Waco, December 17, 1993, at 10:00 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9333566.

The Brazos Student Finance Corporation Board of Directors will meet at 2600 Washington Avenue, Waco, December 17, 1993, at 10:15 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9333563.

The Brazos Student Finance Corporation Board of Directors will meet at 2600 Washington Avenue, Waco, December 17, 1993, at 10:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9333564.

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, December 13, 1993, at 7:00 p.m. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9333373.

The Coryell County Appraisal District Board of Directors met at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, December 14, 1993, at 5:30 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76521, (817) 865-6593. TRD-9333368.

The Dallas Central Appraisal District Appraisal Review Board will meet at 2949 North Stemmons Freeway, Dallas, December 21, 1993, at 10:00 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9333379.

The El Oso Water Supply Corporation Board of Directors met at the Office, FM 99, Karnes City, December 14, 1993, at 7:30 p.m. Information may be obtained

from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9333383.

The Grand Parkway Association met at 5757 Woodway, Suite 140 East Wing, Houston, December 16, 1993, at 10:00 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9333385.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, December 16, 1993, at 7:30 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9333430.

The Guadalupe-Blanco River Authority (Revised Agenda.) Board of Directors met at 933 East Court Street, Seguin, December 16, 1993, at 10:00 a.m. Information may be obtained from James E. Arnst, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9333369.

The Johnson County Rural Water Supply Corporation Tariff Committee met at JCRWSC Office at Highway 171 South Cleburne, December 15, 1993, at 1:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9333421.

The Liberty County Central Appraisal District Board of Directors met at 315 Main Street, Liberty, December 15, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9333340.

The Liberty County Central Appraisal District Appraisal Review Board met at 315 Main Street, Liberty, December 16, 1993, at 9:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9333339.

The Liberty County Central Appraisal District Agricultural Advisory Board met at 315 Main Street, Liberty, December 16, 1993, at 10:30 a.m. Information may be obtained from Sherry Greak, 315 Main Street, Liberty, Texas 77575, (409) 336-5722. TRD-9333338.

The Lometa Rural Water Supply Corporation Board of Directors met at the Lometa Rural Water Supply Corporation Office, 506 West Main Street, Lometa, December 13, 1993, at 7:00 p.m. Information may be obtained from Levi G. Cash and/or Tina Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9333374.

The Mental Health Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Bryan, December 15, 1993, at 1:00 p.m. Informa-

tion may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9333420.

The Middle Rio Grande Development Council Area Advisory Council on Aging met at the Civic Center Reading Room, Uvalde, December 16, 1993, at 1:30 p.m. Information may be obtained from Paul A. Edwards, P.O. Box 1199, Carrizo Spring, Texas 78834, (210) 876-3533. TRD-9333423.

The Mills County Appraisal District met at the Mills County Courthouse, Jury Room, Goldthwaite, December 16, 1993, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9333384.

The Region V Education Service Center Board of Directors will meet in the ESC Boardroom, 2295 Delaware Street, Beaumont, December 17, 1993, at 10:00 a.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont, Texas 77703, (409) 835-5212. TRD-9333344.

The San Antonio River Authority (Revised agenda.) Board of Directors met at 100 East Guenther Street, Boardroom, San Antonio, December 15, 1993, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9333378.

The Tarrant Appraisal District Board of Directors met at 2301 Gravel Road, Fort Worth, December 16, 1993, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005. TRD-9333370.

The Tyler County Appraisal District Appraisal Review Board met at 806 West Bluff, Woodville, December 15, 1993, at 4:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9333372.

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Meetings Filed December 10,  
1993

The Andrews Center Board of Trustees met at 2323 West Front Street, Room 208, Tyler, December 16, 1993, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9333491.

The Blanco County Central Appraisal District Board of Directors met at the Courthouse Annex, Avenue G and Seventh Street, Johnson City, December 14, 1993, at 5:00 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, John-



son City, Texas 78636, (210) 868-4013. TRD-9333498.

**The Carson County Appraisal District Board of Directors** met at 102 Main Street, Panhandle, December 15, 1993, at 9:00 a.m. Information may be obtained from Donita Herber, Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9333492.

**The Dallas Area Rapid Transit Bylaws Ad Hoc Committee** met at 1401 Pacific Avenue, DART Conference Room "B", First Floor, Dallas, December 14, 1993, at 11:00 a.m. Information may be obtained from Jacqueline Young, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3371. TRD-9333469.

**The Dallas Area Rapid Transit Committee-of-the-Whole** met at 1401 Pacific Avenue, DART Conference Room "C", First Floor, Dallas, December 14, 1993, at 1:00 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9333467.

**The Dallas Area Rapid Transit (Revised Agenda.) Board of Directors** met at 1401 Pacific Avenue, DART Board Meeting Room, First Floor, Dallas, December 14, 1993, at 1:00 p.m. Information may be obtained from Jacqueline Young, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3371. TRD-9333475.

**The Dallas Area Rapid Transit Board of Directors** met at 1401 Pacific Avenue, DART Board Room, First Floor, Dallas, December 14, 1993, at 6:30 p.m. Informa-

tion may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9333468.

**The East Texas Council of Governments Private Industry Council** met at ETCOG Office, Kilgore, December 16, 1993, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75666, (903) 984-8641. TRD-9333444.

**The Education Service Center, Region 2 Board of Directors** met at 209 North Water Street (Board Room), Corpus Christi, December 16, 1993, at 6:30 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288, Ext. 2200. TRD-9333473.

**The Education Service Center, Region XVI Board of Director** will meet at the Region XVI Education Service Center, 1601 South Cleveland, Amarillo, December 17, 1993, at 10:00 a.m. Information may be obtained from Jim Holmes, P.O. Box 30600, Amarillo, Texas 79120, (806) 376-5521. TRD-9333443.

**The Ellis County Appraisal District Appraisal Review Board** met at 406 Sycamore Street, Waxahachie, December 15, 1993, at 9:00 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas (214) 937-3552. TRD-9333576.

**The Ellis County Appraisal District Board of Directors** met at 406 Sycamore Street, Waxahachie, December 16, 1993, at 7:00 p.m. Information may be obtained

from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas (214) 937-3552. TRD-9333574.

**The Galveston Bay National Estuary Program Policy Committee** met at the Houston-Galveston Area Council, Second Floor, Conference Room B, 3555 Timmons Lane, Houston, December 16, 1993, at 9:30 a.m. Information may be obtained from Judy Eernisse, 711 West Bay Area Boulevard, Suite 210, Webster, Texas 77598, (713) 332-9937. TRD-9333461.

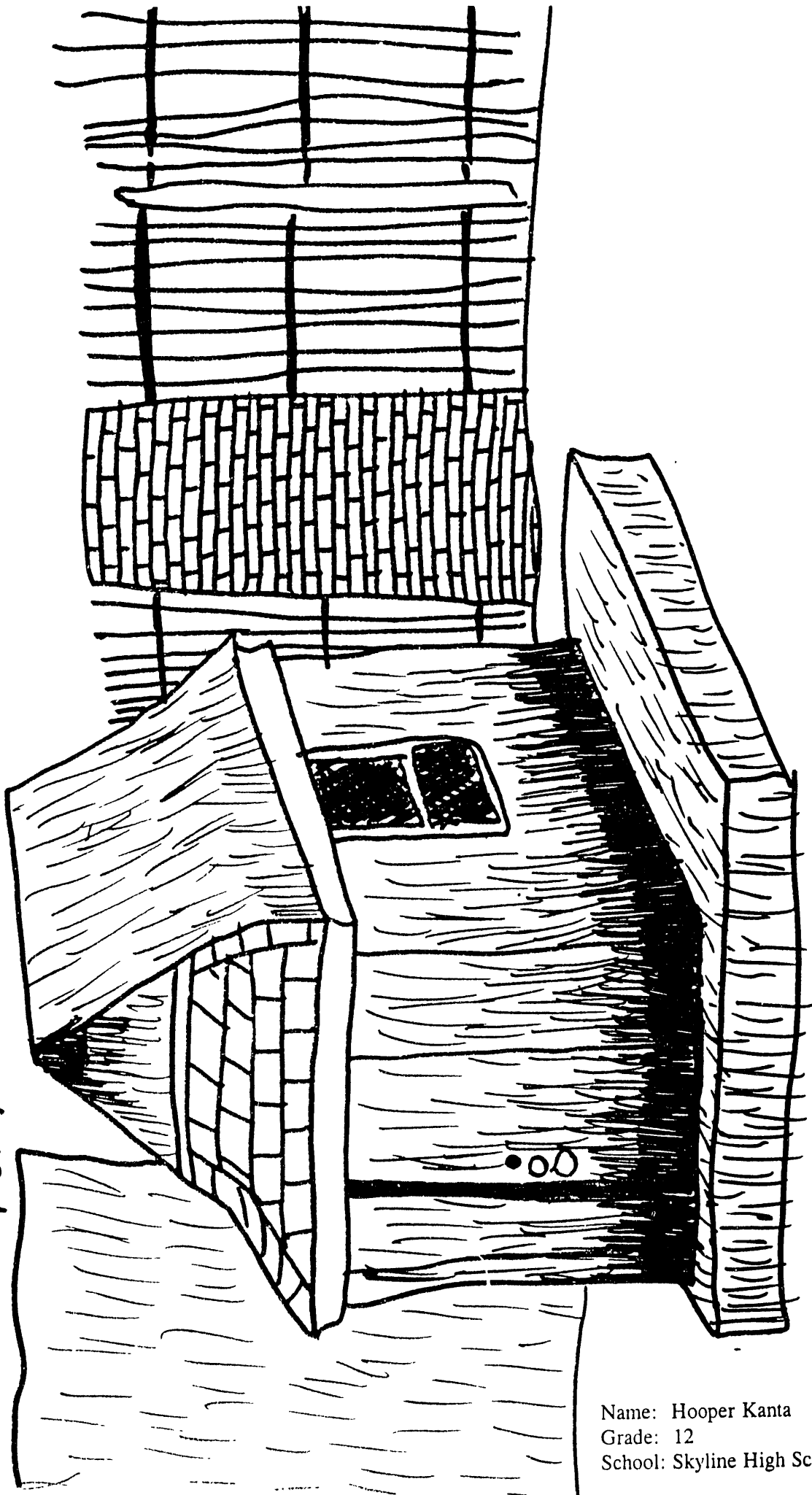
**The Gillespie Central Appraisal District Board of Directors** will meet at the Gillespie County Courthouse Grand Jury Room #208, Fredericksburg, December 21, 1993, at 9:00 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (512) 997-9807. TRD-9333496.

**The Hockley County Appraisal District Board of Directors** met at 1103-C Houston Street, December 13, 1993, at 6:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9333575.

**The Jack County Appraisal District Board of Directors** met at 210 North Church Street, Jacksboro, December 14, 1993, at 7:00 p.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 76458, (817) 567-6301. TRD-9333433.

**The Lampasas County Appraisal District Board of Directors** met at 109 East Fifth Street, Lampasas, December 16, 1993, at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas,

Contour Drawing Hatching  
9-29-93



Name: Hooper Kanta  
Grade: 12  
School: Skyline High School, Dallas ISD

# 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.

## State Banking Board

### Notice of Hearing Cancellation

As no opposition has been noted in the application for domicile change by the Texas Independent Bank, Irving, the hearing previously scheduled for Monday, December 20, 1993, has been cancelled.

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

TRD-9333499 Lynda A. Drake  
Director of Corporate Activities  
Texas Department of Banking

Filed: December 10, 1993

## Texas Bond Review Board

### Bi-Weekly Report on the 1993

#### Allocation on the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of November 20, 1993-December 3, 1993. Pursuant to §2(d) of Article 5190.9a, on September 1, any amounts of volume cap remaining in the separate subceilings are combined under one ceiling. All applications that have not received volume cap are placed on one list in an order determined by a lottery number received in January, or by date of application, regardless of project type. On September 1 reservations for the remaining volume cap are given.

Total amount of the \$882,800,000 state ceiling remaining unreserved as of December 3, 1993: \$26,958,750.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from November 20, 1993-December 3, 1993: Corpus Christi HFC, Eligible Borrowers, Mortgage Credit Certificates, \$19,308, 975.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from November 20, 1993-December 3, 1993: Southeast Texas HFC, Forest View Apartments, Residential Rental, \$3,125,000; Texas Department of Housing and Community Affairs, Eligible Borrowers, Mortgage Revenue Bonds, \$58,475,000; Southeast Texas HFC, Eligible Borrowers, Mortgage Revenue Bonds and MCCs, \$30, 000,000; Collin County HFC, Eligible Borrowers, Mortgage Credit Certificates, \$16,230,975; Aransas Pass-Ingleside HFC, Eligible Borrowers, Mortgage Credit Certificates, \$1,931,400.

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from November 20, 1993-December 3, 1993: North Central Texas HFC, Mortgage Revenue Bonds, \$27,569,000; Tarrant County HFC, Residential Rental, \$4,500,000.

Following is a comprehensive listing of applications which released a portion of their reservation pursuant to the Act from November 20, 1993-December 3, 1993: Texas Department of Housing and Community Affairs, Eligible Borrowers, Mortgage Revenue Bonds, \$25; San Antonio HFC, Santa Fe Apartments, Residential Rental, \$450,000.

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

TRD-9333328 Albert L. Bacarisse  
Executive Director  
Texas Bond Review Board

Filed: December 8, 1993

## Texas Education Agency

### Notice of Public Hearing

The Texas Education Agency and the Texas Higher Education Coordinating Board will conduct four regional public hearings to obtain input on the proposed State Plan for Federal Vocational Career and Technical Education Fiscal Year 1995-1996. The hearings will be conducted at the following times and locations:

Wednesday, January 12, 1994, 1:00-3:00 p.m., District Office-Board Room, North Harris/Montgomery Community College District, 250 Sam Houston Parkway (E), Houston, Texas 77060, (713) 591-3522;

Thursday, January 13, 1994, 10:00 a.m.-Noon, Region X Education Service Center, 400 East Spring Valley Road, Richardson, Texas 75080, (214) 231-6301;

Wednesday, January 12, 1994, 10:00 a.m.-Noon, Region II Education Service Center, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288; and

Wednesday, January 12, 1994, 1:00-3:00 p.m., Midland College, Health Science Lecture Hall, 3600 North Garfield, Midland, Texas 79705, (915) 685-4500.

Individuals who wish to speak at these hearings are requested to bring two copies of their written testimony. Draft copies of the administrative provisions of the proposed plan will be available for review by interested individuals after January 2, 1994, in the education service center in your region, the community college in your district, all Texas State Technical College (TSTC) campuses, and the three campuses of Lamar University. For further assistance in this matter, please contact Lorraine R. Merrick at (512) 463-9311.

Additional information concerning this hearing may be obtained from the Division of Career and Technology Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

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

TRD-9333586

Llonel R. Meno  
Commissioner of Education  
Texas Education Agency

Filed: December 13, 1993

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**Texas Higher Education Coordinating Board**  
Award of Consultant Contract

Under the provisions of Texas Civil Statutes, Article 6252-11c, the Texas Higher Education Coordinating Board has awarded a contract to provide consulting services as described in our Request for Proposals published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7575). The consultant will assess all relevant state data information systems and investigate the feasibility, need and cost of utilizing these existing systems to satisfy the quantitative requirements of the State Postsecondary Review Program. The consultant will also assess the need, cost, and feasibility of establishing an additional, comprehensive system that would integrate existing systems and include Title-IV eligible institutions not currently in existing systems.

The contract was awarded to Neal and Associates, 4702 Fieldstone Drive, Austin, Texas 78735. The amount of this contract is \$39,500. The contract period begins on December 8, 1993, and ends on April 9, 1994. An interim report is due on or around January 31 and the final report is due on April 8, 1993.

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

TRD-9333500

James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board

Filed: December 10, 1993

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**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 rate 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. 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 January 5, 1994, at 9 a.m. in the Public Hearing Room, 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 December 21, 1993, by contacting Sherri Williams, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Issued in Austin, Texas, on December 13, 1993.

TRD-9333588

Nancy Murphy  
Section Manager, Policy and Document Support  
Texas Department of Human Services

Filed: December 13, 1993

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**Request for Proposal for CLASS Waiver Program**

The Texas Department of Human Services (DHS) is inviting proposals for the delivery of case management services in Nueces County under the authority of the Community Living Assistance and Support Services Program (CLASS) Waiver Program. Under this waiver, home and community-based services are provided as an alternative to institutionalization to Medicaid-eligible individuals with related conditions who would otherwise require the level of care of an intermediate care facility for the mentally retarded with related conditions. Individual contracts will be written to serve a minimum of 30 persons, depending on the number of qualifying proposals received.

**Description of Services:** The case manager enrolls participants in the CLASS program and is the focal point for service planning, coordination, and monitoring. The case manager convenes the interdisciplinary team responsible for developing the plan of care and assures that services are aligned with the aims of the individual participant. Case managers further assist in the identification and development of appropriate community resources, review of service delivery, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct service agency which delivers home and community-based services.

**Contract Effective Dates:** Contract(s) will be effective upon the availability of the slots.

**To Request an RFP Package:** To request an RFP package, please contact Barbara Stegall, Program Manager, P.O. Box 149030 (MC W-521), Austin, Texas 78714-9030, (512)450-3228 or FAX (512) 450-4176, John H. Winters Human Services Center, 701 West 51st Street, Austin. RFP packages will be available on January 3, 1994.

**Closing Date and Time:** The closing date for receiving proposals will be 5 p. m. on February 7, 1994.

**Offeror's Conference:** An offeror's conference will be held at 9 a.m. on January 14, 1994, at the Texas Department of Human Service, John H. Winters Human Services Center, 701 West 51st Street, Austin, Texas, Room 121E.

**Restrictions:** The award of a contract is contingent on the availability of 60 slots.

Issued in Austin, Texas on December 10, 1993.

TRD-9333453

Nancy Murphy  
Agency Liaison  
Texas Department of Human Services

Filed: December 10, 1993

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**Texas Department of Insurance**  
Company License Applications

**Company License** The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for name change in Texas for Acordia Financial Industry Benefits, Inc., a foreign third-party administrator. The proposed new name is Acordia Financial Indus-

try Services, Inc. The home office is in Indianapolis, Indiana.

Application for Incorporation in Texas for American National Lloyds Insurance Company, a domestic lloyds company. The home office is in Galveston, Texas.

Application for admission in Texas for Group Health Managers, Inc., a foreign third-party administrator. The home office is in Redford, Michigan.

Application for Incorporation in Texas for Harris Methodist Texas Health Plan, Inc., a domestic health maintenance organization. The home office is in Fort Worth, Texas.

Application for name change in Texas for Prudential-LMI Commercial Insurance Company, a foreign fire and casualty company. The proposed new name is LMI Insurance Company. The home office is in Mansfield, Ohio.

Application for name change in Texas for Minnesota Mutual Fire and Casualty Company, a foreign fire and casualty company. The proposed new name is Minnesota Fire and Casualty Company. The home office is in Minnetonka, Minnesota.

Application for name change in Texas for Planet Insurance Company, a foreign fire and casualty company. The proposed new name is Reliance National Indemnity Company. The home office is in Philadelphia, Pennsylvania.

Application for admission in Texas for Reliance Reinsurance Company, a foreign fire and casualty company. The home office is in Philadelphia, Pennsylvania.

Application for name change in Texas for Reliance National Property and Casualty Insurance Company, a foreign fire and casualty company. The proposed new name is Reliance Surety Company. The home office is in Philadelphia, Pennsylvania.

Issued in Austin, Texas on December 9, 1993.

TRD-9333365 Linda K. von Quintus-Dorn  
Chief Clerk  
State Board of Insurance

Filed: December 9, 1993



### Notice of Hearing

The Commissioner of Insurance at a public hearing under Docket Number 2083, scheduled for 9:00 a.m. on January 27, 1994, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a petition by the Continental Insurance Companies proposing the amendment of Rule II-A-2. in the Farm and Ranch Section and Rule II-A-2. in the Farm and Ranch Owners Section of the Texas Personal Lines Manual to reduce the requirement of ten or more acres of land to three acres as a qualifying factor for eligibility for Farm and Ranch and Farm and Ranch Owners policies. The Commissioner will consider at the same time an alternative staff proposal to repeal these two rules to eliminate in its entirety the requirement of ten or more acres of land as a qualifying factor for eligibility for Farm and Ranch and Farm and Ranch Owners policies. Neither proposal would in any manner change or eliminate the other manual requirements for property to qualify for coverage under Farm and Ranch and Farm and Ranch Owners policies.

The proposed rule amendments by Continental Insurance are set forth in a petition filed October 20, 1993. The

proposed repeal by staff is set forth in a petition filed on November 30, 1993.

Continental Insurance is requesting the change to provide farm and ranch coverage for insureds that would otherwise be eligible for this coverage but have less than ten acres. An example cited by Continental Insurance in its petition is an emu farm. According to the petition, emus, like ostriches, can be successfully raised on less than ten acres; however, the emu farms have buildings and equipment which do not qualify the residence for a homeowners policy. Without the proposed amendment, the emu and ostrich farmers cannot obtain needed coverages in the standard market.

The staff, however, proposes to eliminate any acreage requirement as a qualifying factor for coverage under Farm and Ranch and Farm and Ranch Owners policies because there are other eligibility rules that require the farm and ranch operations to be more than incidental to a dwelling occupancy of the premises in order to qualify for this type of coverage. According to the staff petition, because of these other eligibility rules, there is no reason to continue an acreage requirement if insurers are willing to write Farm and Ranch and Farm and Ranch Owners policies on property of less than ten acres. Adoption of the proposed repeal will result in individual insurers determining whether to cover operations that otherwise qualify for Farm and Ranch or Farm and Ranch Owners policies under these policies regardless of the amount of acreage, rather than the determination being based on a manual rule prohibition.

Copies of the full text of both proposals are available for review in the Office of the Chief Clerk of the State Board of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the rule amendments, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number O-1193-31).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedures and Texas Register Act (Administrative Procedure Act, 73rd Legislative, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified at Government Code, Title 10, Chapter 2001)).

Issued in Austin, Texas on December 9, 1993

TRD-9333366 Linda K. von Quintus-Dorn  
Chief Clerk  
State Board of Insurance

Filed: December 9, 1993



### Texas Department of Licensing and Regulation

#### Auctioneer Education Advisory Board

The Texas Department of Licensing and Regulation is soliciting persons to serve as public members of the Auctioneer Education Advisory Board. To be eligible, a person must be a consumer of services of an auctioneer, either as a consignor or as a buyer at auctions. This Board advises the executive director on educational matters relating to use of the educational trust fund. For information or to request an application, call Debbie Meyer at (512) 463-7357.

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

TRD-9333281

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

Filed: December 8, 1993

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**Property Tax Consultants Advisory  
Council**

The Texas Department of Licensing and Regulation is soliciting persons to serve as public members of the Property Tax Consultants Advisory Council. To be eligible, a person must be a consumer of property tax consultant services. This Council advises the executive director concerning standards of practice, conduct, and ethics for registrants, fees, examination contents and standards of performance for senior property tax consultant examinations, recognition of continuing educational programs and courses, and establishing educational requirements for initial applicants. For information or to request an application, call Debbie Meyer at (512) 463-7357.

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

TRD-9333280

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

Filed: December 8, 1993

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**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 tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Amoco Chemical Company, Plant A (Solid Waste Registration Number 32297) on November 24, 1993, assessing \$8,000 in administrative penalties with \$1,600 deferred and foregone pending compliance.

Information concerning any aspect of this order may be obtained by contacting LaDonna Castanuela, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2054.

An agreed enforcement order was entered regarding the City of Carrollton (TNRCC Facility I.D. 27151) on November 24, 1993, assessing \$4,000 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) 239-2053.

An agreed enforcement order was entered regarding El Paso County (TNRCC Facility I.D. 09036) on November 24, 1993, assessing \$1,000 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) 239-2053.

An agreed enforcement order was entered regarding Trifinery, Inc. (Permit Number 02720; Solid Waste Registration Number 34703 on November 24, 1993, assessing \$690,190 in administrative penalties with \$330,190 deferred pending compliance.

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) 239-2053.

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

TRD-9333418

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: December 9, 1993

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**Notices of Applications**

Attached are notices of application for permits to appropriate Public Waters of the State of Texas, which were issued during the period of December 6-10, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state: your name, mailing address, and daytime phone number; the application number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application which would satisfy your concerns and cause you to withdraw your request for hearing.

If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper 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 or questions concerning procedures should be submitted in writing to Bill Ehret, Assistant Chief Hearings Examiner, Texas Natural Re-

source Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Texas Municipal Power Agency; Application Number 5473 for new permit; Brazos River Basin; for sediment control at the Gibbons Creek Lignite Mine located approximately 9.7 miles northwest of Anderson, Texas.

Elton Rust; Application Number 5474 for new permit; Guadalupe River Basin, based on a Subordination Agreement between the applicant and the Guadalupe-Blanco River Authority, Kendall County, Texas.

Thomas H. Birdsong, III; Application Number 12-3489B to amend Certificate of Adjudication Number 12-3489; Brazos River Basin; Eastland County, Texas.

J. R. Grimshaw and wife, Helen Grimshaw; Application Number 5274-A to amend Permit Number 5274; Brazos River Basin, Eastland County, Texas.

Bobby W. Straub; Application Number 12-3551B to amend Certificate of Adjudication Number 12-3551; Brazos River Basin; Comanche County, Texas.

Ronnie N. Love and wife, Barbara Ann Love, Melva T. Love and wife, Eunice M. Love, and D. W. Rodgers and wife, Agnes Rodgers; Application Number 12-3486B to amend Certificate of Adjudication Number 12-3486; Brazos River Basin; Eastland County, Texas.

Ronnie N. Love and wife, Barbara Ann Love, and H. L. Perrin and wife, Erma Lee Perrin; Application Number 12-3485B to amend Certificate of Adjudication Number 12-3485; Brazos River Basin; Eastland County, Texas.

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

TRD-9333495

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: December 10, 1993

◆ ◆ ◆  
**Notice of Application for Waste Disposal Permits**

Attached are Notices of Application for waste disposal permits. These notices were issued during the period of December 6-10, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state: your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application, the statement "I/we request a public hearing", a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will

forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

Advanced Aromatics, Inc.; a petrochemical and industrial organic chemicals manufacturing plant; at 5501 Baker Road in the City of Baytown, Harris County, Texas; renewal; 01914.

The Atchison, Topeka and Santa Fe Railway Company; a locomotive and railcar refueling, repair, and rebuilding facility; at the intersection of Brazos and Park Streets in the City of Cleburne, Johnson County, Texas; amendment; 00740.

Baker Performance Chemicals Incorporated, a specialty organic chemicals manufacturing plant; north of and adjacent to U.S. Highway 90, approximately five miles southwest of the City of Dayton, and approximately 1/2 mile east of FM Road 1413 in Liberty County, Texas, amendment; 01969.

Berwind Railway Service Company; a railroad car repair and service facility; on the north side of Verhalen Industrial Parkway, south of State Highway 1998, and west of State Highway 2199, approximately four miles east of the City of Marshall, Harrison County, Texas; new; 03637.

Brazoria County; wastewater treatment facilities; along the south side of County Road 45 between State Highway 288 and State Highway 35 in Brazoria County, Texas; renewal; 12818-01.

Empak, Inc., a railcar cleaning service facility, at 17020 Premium Drive in the City of Hockley, Harris County, Texas, new, 03627.

Harris County Water Control and Improvement District Number 116; wastewater treatment facilities; at 5335 Strack Road, approximately 5,000 feet west from the intersection of Strack Road and Stuebner-Arlene Road in Harris County, Texas, renewal, 10955-01.

Hide Osinga, a dairy; approximately 1,440 feet west of the intersection of U.S. Highway 67-377 and FM Road 1476 in Comanche County, Texas, new, 03635.

City of La Marque, wastewater treatment facility, at the intersection of Campbell and Sixth Street, approximately 1,300 feet southwest of the intersection of FM Road 519 and State Highway 3 in Galveston County, Texas, amendment; 10410-01

Lakes on Eldridge, Limited, a Texas Limited Partnership, the Harris County Municipal Utility District Number 341 Wastewater Treatment Facilities, approximately 3,500 feet southeast of the intersection of Addicks Fairbanks Road and Tanner Road in Harris County, Texas; renewal; 13420-01.

Monsanto Company, the Chocolate Bayou Plant which manufactures organic and inorganic chemicals, adjacent to FM Road 2917 and approximately 1.25 miles northwest of

the FM 2917/FM 2004 intersection and south-southeast of the City of Alvin, Brazoria County, Texas; renewal; 00001.

Petroleum Wholesale, Inc.; wastewater treatment facility; will be located on the northwest corner of the intersection of Interstate Highway 35 and FM Road 1304, approximately one mile north of the City of Abbott in Hill County, Texas; new 13677-01.

City of Quitman; wastewater treatment facilities; approximately 0.3 mile west-northwest of the intersection of State Highway 37 and State Highway 154 (City of Quitman) and 700 feet north of State Highway 154 in Wood County, Texas; renewal; 10254-01.

Richey Road Municipal Utility District; wastewater treatment plant; approximately 3,300 feet northeast of the intersection of Hardy Toll Road and W. W. Thorne Drive, and three miles south-southwest of the City of Westfield in Harris County, Texas; renewal; 12378-02.

Stebec, Inc. and Monument Inn, Inc.; the Monument Inn Wastewater Treatment Facilities; approximately 150 feet due west of State Highway 134, 4,100 feet due north of the San Jacinto Monument and 400 feet due south of the Houston Ship Channel in Harris County, Texas; new; 13666-01.

Texas Department of Mental Health and Mental Retardation; wastewater treatment facilities; approximately one mile west of the intersection of State Highway 171 and FM Road 2838, three miles northwest of the City of Mexia in Limestone County, Texas; renewal; 10717-01.

Trinity River Authority of Texas; the Central Wastewater Treatment Facilities; approximately 6,000 feet northwest of the intersection of Interstate Highway 30 and Loop 12, at the confluence of the West Fork Trinity River and Mountain Creek in Dallas County, Texas; renewal; 10303-01.

Western Recycling, Inc.; a meat rendering facility; approximately 4,000 feet east southeast of the intersection of State Highway 20 and Hemley Road, near the termination of Kiely Road, El Paso County, Texas; renewal; 01243.

Issued in Austin, Texas, on December 10, 1993

TRD-9333578 Gloria A Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: December 10, 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 number or other recognizable reference to this application; the

statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten 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.

Notice of Opportunity to Comment on Permitting Actions for Week ending December 10, 1993.

Application by Gulf States Utility Company, for a minor amendment to Permit Number 00336 in order to include another sampling point for stormwater runoff for Outfall 301. This addition would bring the total sampling points for Outfall 301 to 19. The proposed amendment will also enforce more stringent effluent limitations and requirements as needed, in order to meet existing applicable rules and regulations. The permit currently authorizes a discharge of once through cooling water and previously monitored effluents at a volume not to exceed an average flow of 1,306,000,000 gallons per day, which will remain the same. The applicant operates the Sabine Steam Electric Station. The plant site is approximately 1.5 miles south of FM Road 1442 at a point approximately 2.5 miles west of the FM Road 1442/State Highway 87 intersection, southwest of the City of Orange, Orange County, Texas.

Application by Cibolo Creek Municipal Authority, for a minor amendment to Permit Number 11269-01 in order to decrease the flow from a volume not to exceed 6.2 million gallons per day average to a volume not to exceed 4.5 million gallons per day average. The Odo J. Riedl Wastewater Treatment Facilities are on the south side of Cibolo Creek, approximately 1.5 miles east of downtown Schertz and 3,600 feet south of FM Road 78 in Bexar County, Texas.

Application by City of La Coste, for a minor amendment to Permit Number 10889-01 in order to change the method of disinfection from chlorination to an ultraviolet light system for the final phase. The proposed amendment will also enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The permit currently authorizes an interim phase to dispose of treated domestic wastewater effluent by irrigation on ten acres of grassland. Application rates for the irrigated land shall not exceed 3.3 acre-feet/acre/year. The final phase authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed 200,000 gallons per day. Both the interim and final phases will remain the same in the amended permit. The City of La Coste wastewater treatment facilities are at the easterly city limits of the City of La Coste, approximately 0.5 of a mile east-southeast of the intersection of FM Road 471



and FM Road 2790, and 0.3 of a mile due south of the Southern Pacific Railroad in Medina County, Texas.

Application by River Plantation Municipal Utility District, for a minor amendment to Permit Number 10978-01 in order to change Other Requirements Item 6 (F) to state that "Holding ponds shall be maintained to provide a minimum of one foot of freeboard". The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 600,000 gallons per day, which will remain the same. The permittee is also authorized to use the effluent to irrigate a 135-acre golf course at an application rate not to exceed 2.0 acre-feet/acre/year, which will remain the same. The wastewater treatment facilities are approximately 1.5 miles downstream from the Interstate Highway 45 bridge, on the north bank of the West Fork San Jacinto River in Montgomery County, Texas.

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

TRD-9333579 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: December 10, 1993

## Public Notices

The Texas Natural Resource Conservation Commission (the Commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. Pursuant to §§361.184(a), the Commission must publish in the *Texas Register* those facilities which are identified as eligible for listing on the state registry. The most recent registry listing was published in the March 30, 1993 issue of the *Texas Register* (18 TexReg 2159).

The following is a facility or area that the Executive Director of the Texas Natural Resource Conservation Commission has determined eligible for listing and which the Executive Director proposes to list on the state registry. Also specified is the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive Director.

The facility known as the former Toups site (the site) is located at Sour Lake, Hardin County, Texas. The site operated simultaneously as a fencepost treating facility and a municipal waste dump from 1957 until the late 1960's, when the fencepost treating facility closed. In addition to operating as a municipal waste dump from 1970 to 1974, the site was operated as a swine farm, of approximately 400 to 1000 head, from 1970 until 1982. The site is abandoned, and located on-site are soils which contain pentachlorophenol, chromium, and lead. One-hundred-forty-four drums were found on-site. As part of a TNRCC immediate response action, the contents of the drums were sampled tested. The drums were placed in overpack containers and appropriately stored at the site. Hazards presented by the site are potential contamination of surface water and groundwater due to the release of hazardous substances from the site; and potential exposure from the

ingestion and direct contact of contaminated soils, surface water and groundwater.

A public meeting has been scheduled regarding the proposed listing of the site. The public meeting will be legislative in nature and not a contested case hearing under the Administrative Procedure Act (Chapter 268, §§1 of the Session Laws, 73rd Legislature). Persons desiring to comment on the proposed listing of this site may do so in the context of the public meeting either orally or in writing. Comments may also be submitted to the attention of Charles Epperson, Superfund Investigation Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087; (512) 908-2498. All comments must be received by the Commission on or before February 8, 1994.

The public meeting has been scheduled for the following time and place; 7:00 p.m. to 9:00 p.m., Tuesday, January 25, 1994, City Hall, Council Chambers, 121 West Barkley, Sour Lake, Texas.

The Executive Director of the Texas Natural Resource Conservation Commission has prepared a brief summary of the Commission's public records regarding this site. This summary, as well as a portion of the public records for the site, are available for inspection and copying during the business hours of the Alma M. Carpenter Public Library, 310 South Ann, Sour Lake, Texas (409) 287-3573. Copies of the complete public record file may be obtained during regular business hours of the Texas Natural Resource Conservation Commission by contacting Beth Wigham, Central Records Center, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2020. Copying of file information is subject to payment of a new fee.

Issued in Austin, Texas on December 13, 1993.

TRD-9333590 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: December 13, 1993

The Texas Natural Resource Conservation Commission (TNRCC) announces an application deadline extension for assistance grants for the purpose of continuing and improving local municipal solid waste enforcement programs. The notification of availability is granted under the authority of the Texas Health and Safety Code, §§361.031. 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 these grants has been extended from 5:00 p.m., Wednesday, December 15, 1993, to 5:00 p.m., Wednesday, January 12, 1994. Questions relating to this deadline extension should be directed to Tim Haase of the TNRCC Municipal Solid Waste Division, Compliance and Enforcement Section at (512) 239-6007.

Issued in Austin, Texas on December 13, 1993.

TRD-9333589 Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: December 13, 1993

## Texas Parks and Wildlife Department Notice of Public Meeting

Permit Number SR79-028. Notice is hereby given that William Malone, whose address is Route 4, Box 1181, Paris, Texas 75460, as of November 29, 1993, filed an administratively complete renewal application with the Texas Parks and Wildlife Department for a permit: to remove up to 200 cubic yards total per month from the North Sulphur River by the use of a front-end loader at the following sites:

Site A: located approximately 20 miles southeast of Paris, Lamar County starting at the CR 167000 bridge and extending west for 1/4 mile adjacent to the property of A. L. Malone.

Site B: located approximately 18 miles southeast of Paris, Lamar County starting at a point CR 15580 and extending eastward for 1/2 mile adjacent to the properties of T. R. Wegner and William Malone.

This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in the Texas Parks and Wildlife Code, Chapter 86, and will not authorize the crossing of any private property.

The hearing to receive public comment on this application will be conducted: January 25, 1993, at 3:00 p.m., Conference Room A-200, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Travis County, at which time all interested persons may and be heard. Comments maybe mailed to the Department at 4200 Smith School Road, Austin, Texas 78744, (512) 444-0160 or (512) 444-0274, Fax: (512) 448-4766 or presented orally or in writing at the hearing. Comments sent by mail should be received by the Department prior to the public comment hearing.

In addition, any person who can demonstrate a justiciable interest may request a formal contested case hearing pursuant to the Administrative Procedure Act, Texas Government Code, §2001.054. Any person wishing to request such a hearing should submit a written request to Catherine Livingston at: 4200 Smith School Road, Austin, Texas 78744. Such a request should include a short statement of the nature of any objections to the requested permit and a description of the potential adverse impact that may be suffered by the requestor. Requests for formal contested case hearings must be received by the Department no later than 30 days after the date of issuance of this notice or by the close of the public comment hearing, whichever is later.

Further information concerning any aspect of the application or hearing may be obtained by contacting Catherine Livingston, Environmental Attorney, Legal Services Division.

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

TRD-9333363 Catherine Livingston  
Legal Services  
Texas Parks and Wildlife Department

Filed: December 9, 1993

## Public Utility Commission of Texas Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 29, 1993, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number.** Application of Central Power and Light Company to amend Certificate of Convenience and Necessity for a proposed transmission line within Starr County, Docket Number 12534 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 12534, Central Power and Light Company requests approval of its application to construct approximately 7.7 miles of 138-kV transmission line.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on December 7, 1993.

TRD-9333292 John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: December 8, 1993

## 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 Structural Metals, Seguin, Texas.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Structural Metals pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12553.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Structural Metals. The geographic service market for this specific service is the Seguin, Texas 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 December 7, 1993.

TRD-9333290

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

Filed: December 8, 1993



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 Zocom Technologies, Dallas, Texas.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Zocom Technologies pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12530.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Zocom Technologies. The geographic service market for this specific service is the Dallas, Texas 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 December 7, 1993.

TRD-9333291

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

Filed: December 8, 1993



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 Austin MHMR, Austin.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for MHMR pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12556.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Austin MHMR. The geographic service market for this specific service is the Austin 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 December 9, 1993.

TRD-9333562

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

Filed: December 10, 1993



## Texas Workers' Compensation Commission

### Maintenance Tax Rate

In accordance with the Texas Labor Code, §403.003, this agency certified that the maintenance tax for support of the Texas Workers' Compensation Commission be set at 1.7917% of Gross premiums collected during January 1, 1993-December 31, 1993.

Our actual calculation of maintenance tax for the period yields 1.83%. However, this rate plus the proposed rate of 1.2083% by the Texas Workers' Compensation Insurance Fund equals 3.0383%. This exceeds the 3.00% allowed in the Fund's bond covenants, therefore in the interest of corporation the commission is voluntarily reducing its rate.

In addition, the commission, in coordination with the Texas Workers' Compensation Research Center, certifies that the maintenance tax for support of the Research Center be set at 0.03% of gross premiums collected during January 1, 1993-December 31, 1993.

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

TRD-9333295

Susan Cory  
General Counsel  
Texas Workers' Compensation Commission

Filed: December 8, 1993



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