Texas Register

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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

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

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

Open Meetings - notices of open meetings

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

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

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

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

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

Texas Administrative Code

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

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

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

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

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

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

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

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

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

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

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

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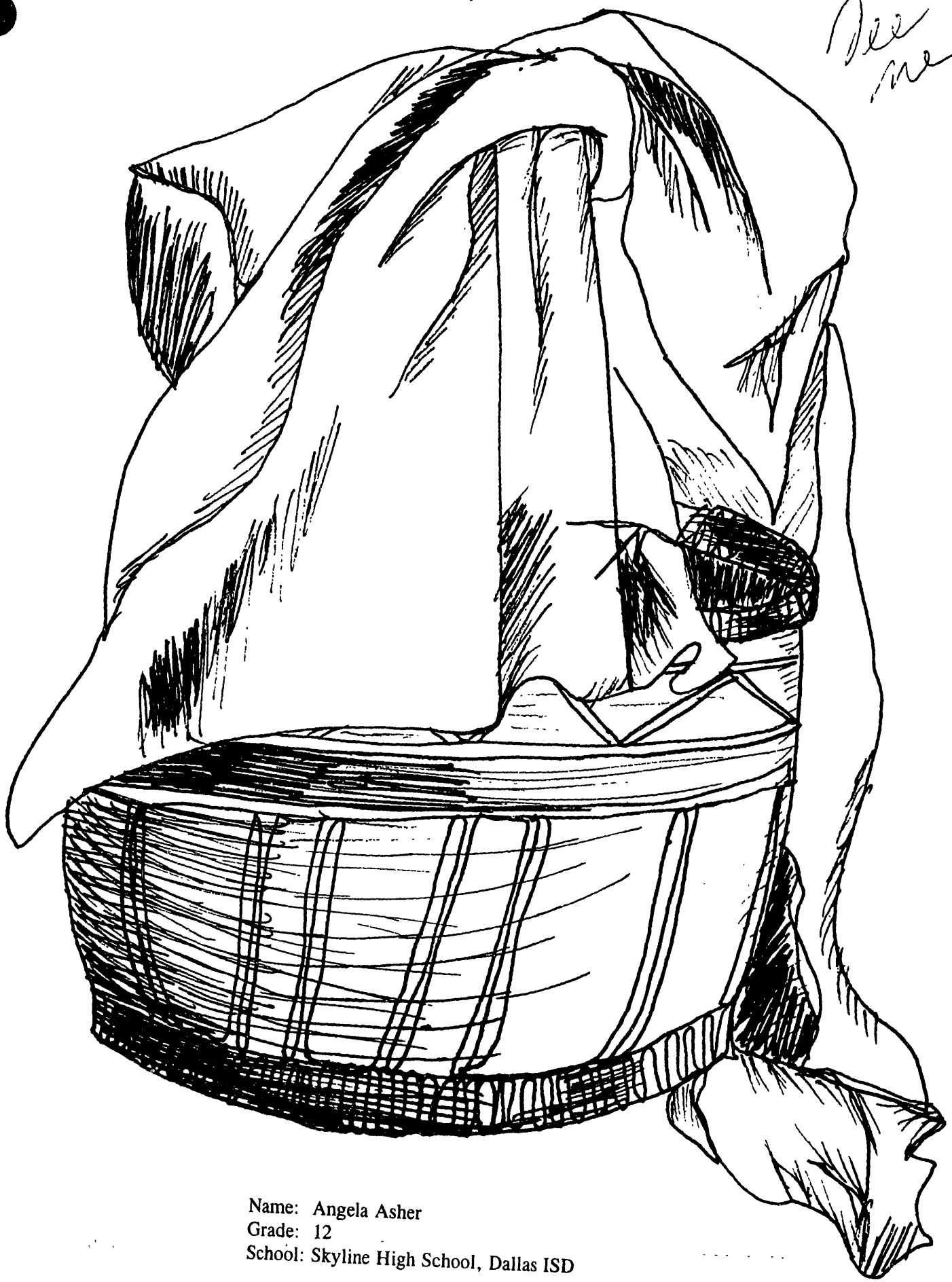

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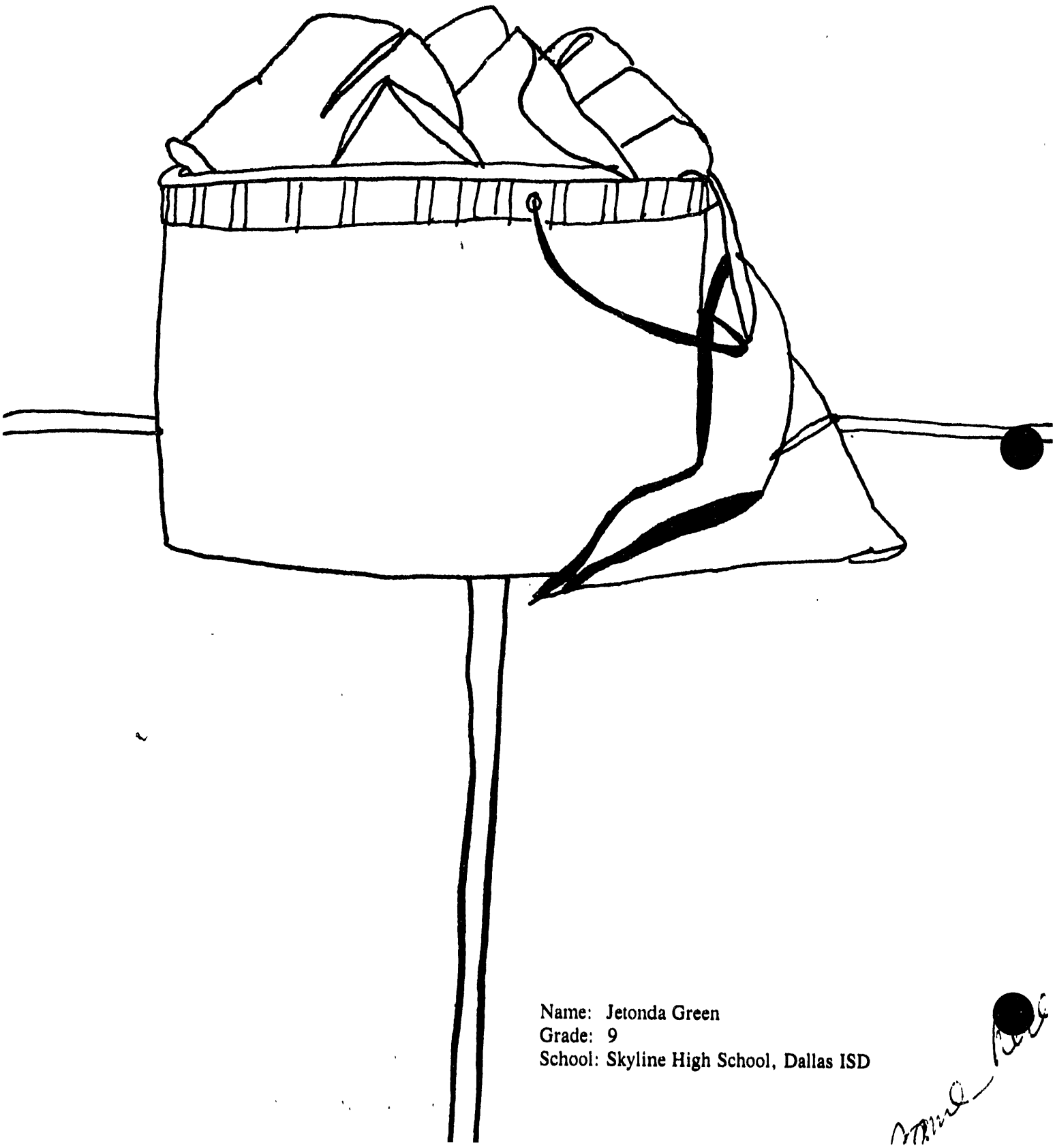

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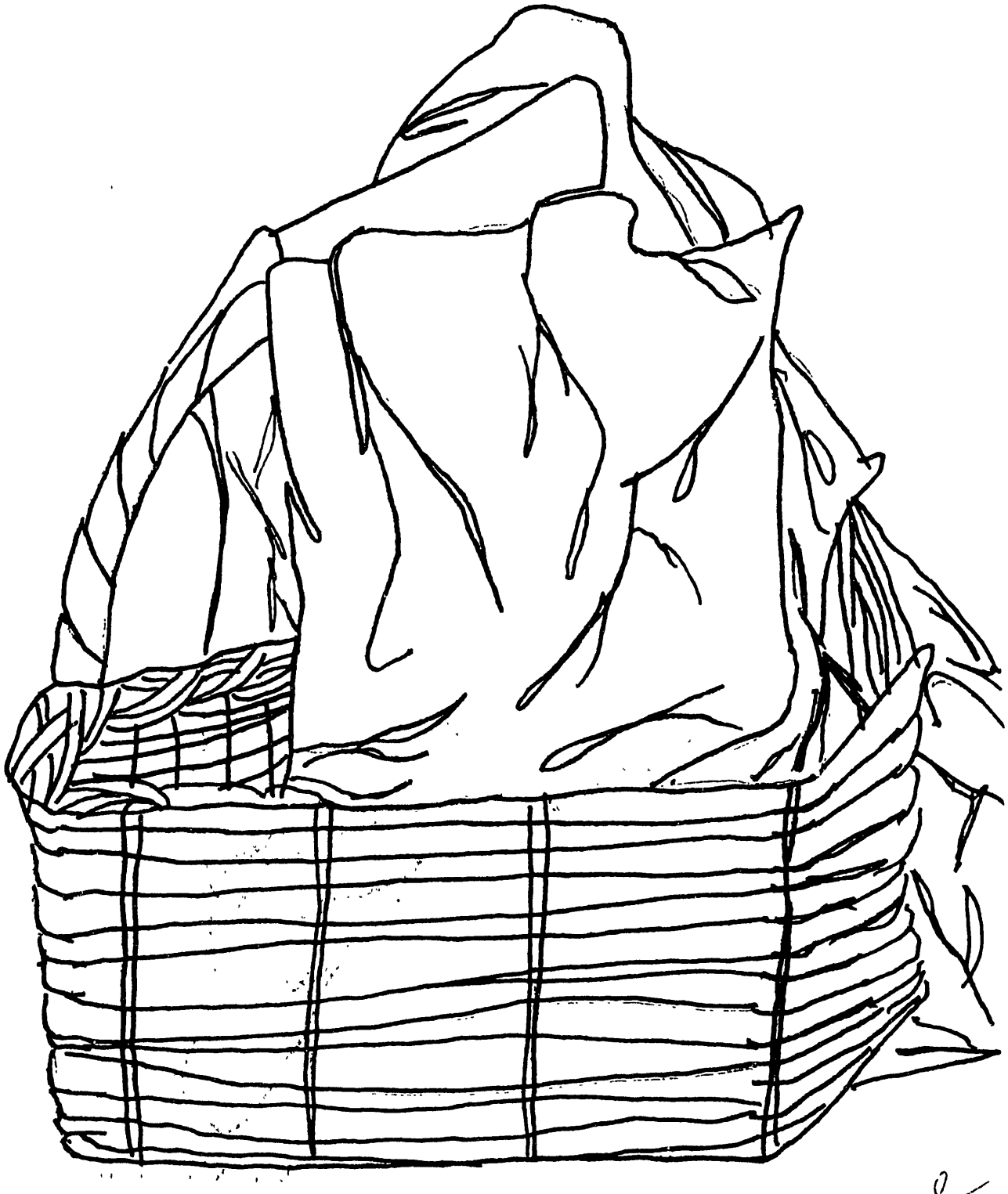

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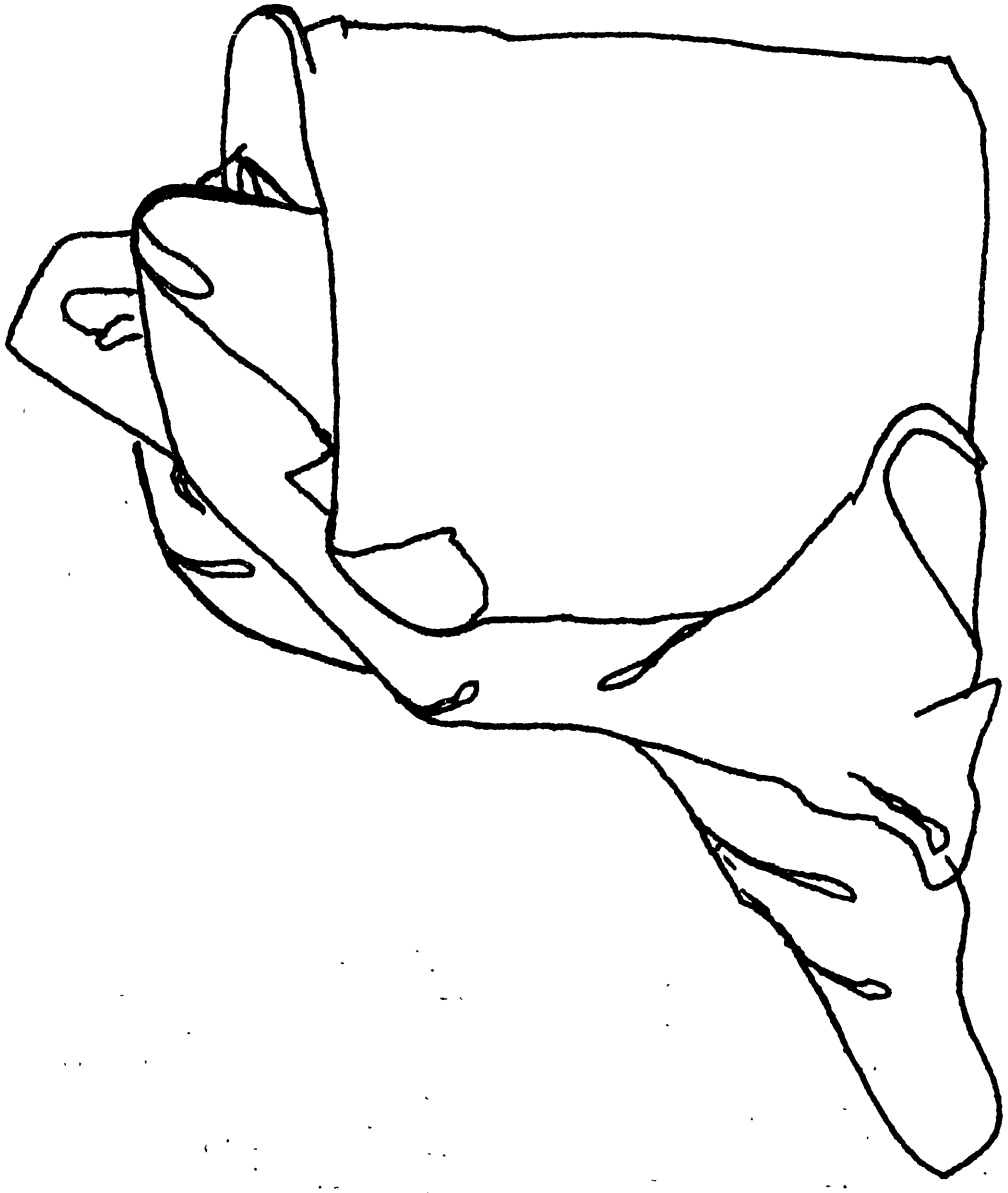

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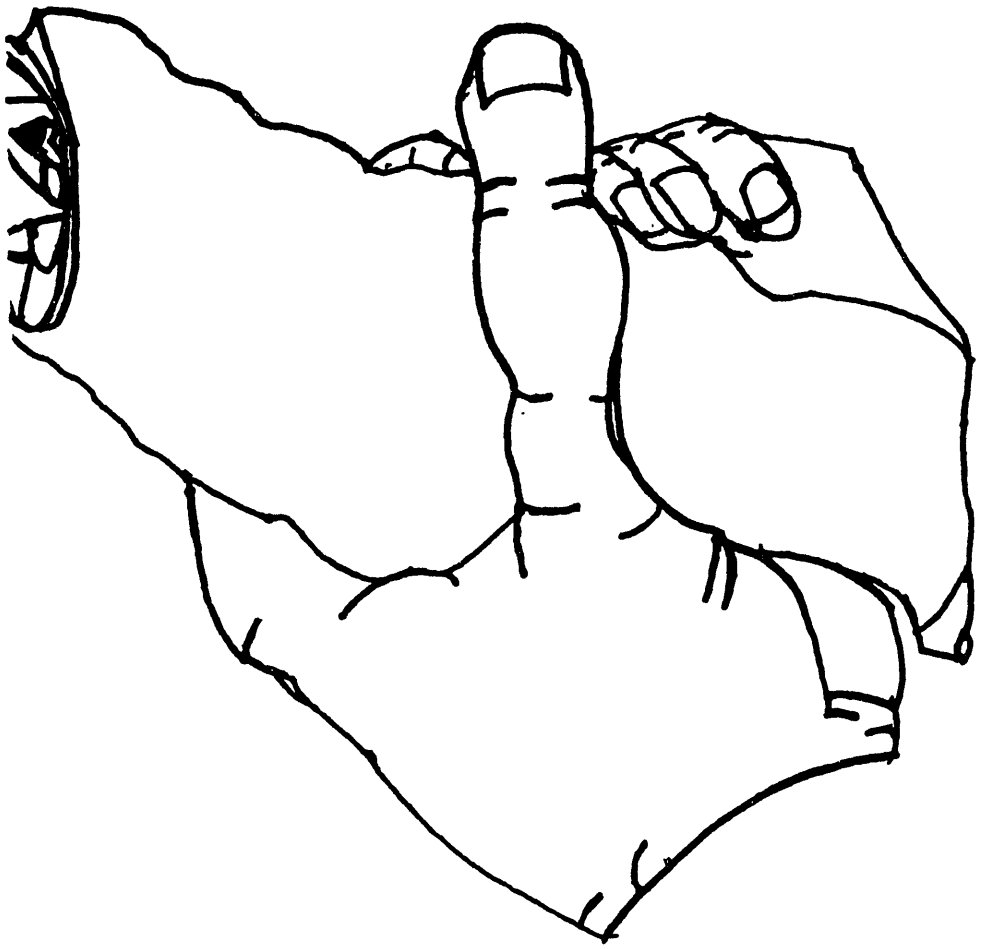
School: Skyline High School, Dallas ISD



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Proposed Sections

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

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

TITLE 4. AGRICULTURE
Part II. Texas Animal Health Commission
Chapter 35. Brucellosis
Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.1

The Texas Animal Health Commission proposes an amendment to §35.1, concerning definitions.

The proposed amendment is necessary to expand the definition of an adjacent herd to include all cattle or bison that occupies a premise that lies within one mile of a herd known to be affected.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is to assure that all herds located within one-mile radius of an affected herd can be identified and tested for brucellosis and clean up any reservoirs of infection which may exist. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.041 and §163.061, which authorizes the commission to adopt rules regarding testing of livestock.

No other section of the Agriculture Code is affected by this proposed amendment.

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

Adjacent Herds–A herd of cattle or bison that occupies a premise that lies **within one mile of** [borders] a "herd known to be affected" [(this includes herds separated by roads or fordable streams)].

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-9333596 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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• 4 TAC §35.2

The Texas Animal Health Commission proposes an amendment to §35.2, concerning general requirements.

The proposed amendment is necessary to provide for a waiver of required testing of adjacent herds by the epidemiologist.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to assure that herd owners are aware that a waiver will be allowed. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.041, and §163.061, which authorizes the commission to adopt rules regarding testing of livestock.

No other section of the Agriculture Code is affected by this proposed amendment.

§35.2. General Requirements.

(a)-(k) (No change.)

(l) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

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

(3) An initial test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent, or high risk herds will be conducted within a specified time set by state-federal personnel upon consultation with each herd owner **unless waived by epidemiologist.** If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the time for testing may be set without consultation with the herd owner.

(4)-(8) (No change.)

(m)-(u) (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-9333597 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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• 4 TAC §35.4

The Texas Animal Health Commission proposes an amendment to §35.4, concerning entry requirements.

The proposed amendment is necessary to provide that nonvaccinated female cattle between 4 and 12 months of age entering a Texas market from other states may be vaccinated at the owner's expense at the market prior to leaving rather than prior to sale at the market. If however, these cattle are not vaccinated at the market then they must be consigned only to a quarantined feedlot or slaughter and accompanied by an "S" permit.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public

benefit anticipated as a result of enforcing the section is to provide another option for buyers of these heifers by allowing vaccination after the sale. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.081, which authorizes the commission to regulate the importation of livestock; and §163.061, which authorizes the commission to promulgate rules regarding vaccination of cattle.

No other section of the Agriculture Code is affected by this proposed amendment.

§35.4. Entry and Change of Ownership.

(a) (No change.)

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All female cattle between 4 and 12 months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements:

(A)-(C) (No change.)

(D) nonvaccinated female cattle between four and twelve months of age consigned from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, quarantined feedlot or slaughter. These cattle [Upon arrival at the livestock market, they] may be vaccinated at the market at no expense to the state [,] prior to leaving the market and be [sold and] moved freely. If these cattle are not vaccinated [upon arrival] at the market then they shall be consigned from the market only to a quarantined feedlot or slaughter, accompanied by an "S" permit.

(E) nonvaccinated female cattle between four and twelve months of age consigned from an out-of-state livestock market to a Texas livestock market, quarantined feedlot or slaughter will be accompanied by an "S" permit or certificate of veterinary inspection. Individual identification is not required. These cattle [Upon arrival at the Texas livestock market, they] may be vaccinated at no expense to the state [,] prior to leaving the market and be [sold and] moved freely. If these cattle are not vaccinated [upon arrival] at the market then they shall be consigned from the market only to a quarantined feedlot or slaughter, accompanied by an "S" permit.

(F) nonvaccinated female cattle between four and twelve months of age moving may enter on a calfhood vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.

(2) (No change.)

(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 9, 1993.

TRD-9333598 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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• 4 TAC §35.6

The Texas Animal Health Commission proposes an amendment to §35.6, concerning indemnity payments to owners of cattle exposed to brucellosis.

The proposed amendment is necessary to provide for an increase in the amount of brucellosis indemnity that can be paid to an owner in depopulation of infected cattle herds.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is to assure that infected herd owners will be entitled to more indemnity when they chose to depopulate their herd. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §163.066, which authorizes the commission to adopt rules regarding compensation of owners of cattle.

No other section of the Agriculture Code is affected by this proposed amendment.

§35.6. Indemnity Payments to Owners of Cattle Exposed to Brucellosis.

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

(c) General Requirements.

(1) The Commission, through its Executive Director, will determine the amount and number of animals for which indemnity will be paid. The owner of a herd selected for indemnity may be reimbursed from a combination of TAHC and/or Veterinary Services funds for depopulation at a total rate not to exceed:

(A) negative exposed, test-eligible females-**$250** [$200] per head for not more than **100** [50] females;

(B) negative exposed, test-eligible males-**$300** [$250] for not more than five [two] per herd;

(C) (No change.)

(D) females under test age:

(i) unspayed and less than **500** [400] pounds-**$200** [$150] per head;

(ii) over **500** [400] pounds-not eligible for depopulation funds. Actual cost up to ten dollars per head may be reimbursed for spaying, or these cattle may be "S" branded and sent to slaughter, quarantined feedlot, or market for sale to slaughter or quarantined feedlot. A spaying certificate and the proof of payment for cost of spaying must be submitted simultaneously with the indemnity claim.

(2)-(6) (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-9333599 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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Subchapter B. Eradication of Brucellosis in Swine

• 4 TAC §35.45

The Texas Animal Health Commission proposes an amendment to §35.45, concerning procedures for handling brucellosis infected herds of swine.

The proposed amendment is necessary to require that infected herds of swine must have the first of three retests not sooner than 30 days nor more than 60 days after all reactors are removed with the other two at designated intervals; the commission may order depopulation following a determination by the epidemiologist that the herd is a problem herd based on test results or other epidemiological data; state indemnity funds may be

paid to the herd owners whose herd has been ordered depopulated provided certain criteria which are detailed in the amendment are followed.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is to assure that infected swine herds which are determined to be problems in the brucellosis eradication program may be depopulated thus furthering the national program. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.041, which authorizes the commission to adopt rules regarding treatment of livestock, §165.024, which authorizes the commission to order swine to be depopulated, and §165.025, which allows the commission to adopt rules regarding compensation of owners of swine.

No other section of the Agriculture Code is affected by this proposed amendment.

§35.45. Procedures for handling Brucellosis Infected, Adjacent, and High Risk Herds of Swine.

(a) Infected Herds. All swine in infected herds must be confined to the premises under quarantine until the herd has been freed of brucellosis or sold for slaughter under permit. Three negative infected herd retests are required for release of quarantine, with the first retest occurring **not sooner than** 30 days **nor more than 60 days** [or more] after all reactors have been removed for slaughter. The second retest must be conducted 60 to 90 days after the first negative retest. A third negative infected herd retest is required 60 to 90 days following the second retest. Herds of origin of Market Swine Test (MST) reactors that fail to reveal additional reactors on a herd test would not be required to be held under quarantine for additional testing unless there is evidence of Brucella infection or exposure to brucellosis.

(b) (No change.)

(c) Depopulation. Any infected, adjacent, or high risk herd may be depopulated. **The commission may order depopulation of a herd following a determination by the epidemiologist that the herd is a problem herd based on test results or other epidemiological data involving the herd.**

(d) Indemnity. Indemnity may be paid to the herd owner, **whose herd has been ordered depopulated,** if funds are made available for indemnity purposes, if funds are made available for indemnity purposes, [and a recommendation is made by the epidemiologist to depopulate the herd and the owner concurs.] **The following criteria will be used in the payment of indemnity.**

(1) The entire herd (all swine under common owner-ship or management) must have been declared as infected or exposed.

(2) An indemnity agreement must be signed and approved for payment by the executive director and the USDA, APHIS, VS veterinarian-in-charge.

(3) The herd owner must comply with each requirement pertaining to herd depopulation and payment for indemnity.

(4) All swine in a herd must be depopulated. They will be either permitted to slaughter on a VS Form 1-27 or euthanized.

(5) State indemnity funds, when available, will be used for the reimbursement to the owner for swine not eligible for federal indemnity funds. The amount of state indemnity will be determined by an appraisal of the market value of the swine at time of depopulation less salvage, not to exceed $50 per head.

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-9333600 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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Chapter 43. Tuberculosis

A Cattle

• 4 TAC §43.2

The Texas Animal Health Commission proposes an amendment to §43.2, concerning interstate movement requirements.

The proposed amendment is necessary to require sexually intact cattle entering from a country without a recognized comparable tuberculosis status for purposes other than slaughter or to a TB quarantined feedlot, be held under quarantine at destination pending a negative TB test between 120 and 180 days after arrival. Sexually intact cattle moving to a TB quarantined feedlot are to be S"-branded prior to entry into the state and move to the quarantined feedlot in sealed trucks accompanied by a permit. All sexually intact cattle are to be tested negative to TB at the port of entry. Additionally this amendment further requires beef steers and spayed heifers from Mexico entering the State of Texas may enter from a United States equivalent TB accredited free herd without further testing. In addition, beef steers and spayed heifers entering from other herds in Mexican States with a TB status equivalent to a United States Modified Accredited TB free status may enter with a negative test 60 days prior to entry under SARH supervision or at the port of entry. If the test is not under SARH supervision or done at the port, the beef steers and spayed heifers may enter only to slaughter, a TB quarantined feedlot or be held for retest after 60 days. Holstein or Holstein cross steers are prohibited from entry. A Tuberculosis Quarantined Feedlot is defined. The amendment would allow foreign states or areas in foreign countries to qualify for entry into Texas.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is to assure the public that there will be less likelihood of TB infection entering the state through importation of Mexican cattle. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, §161.081, which provides the Texas Animal Health Commission with the authority to promulgate rules regulating the movement of animals into the State, and §162.003 which provides the Commission with the authority to promulgate rules prescribing the system of testing cattle for tuberculosis.

No other section of the Agriculture Code is affected by this proposed amendment.

§43.2. Interstate Movement Requirements.

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

(c) Cattle from any foreign country or part thereof with no recognized comparable tuberculosis status may enter as follows.

(1) All sexually intact cattle to be held for purposes other than for immediate slaughter or feeding for slaughter in a tuberculosis quarantined feedlot shall be tested at the port of entry into

Texas under the supervision of the port veterinarian, and be held under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The testing will be performed at the owner's expense.

(2) All sexually intact cattle destined for feeding for slaughter in a tuberculosis quarantined feedlot, must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to entry into the state and may move into the Tuberculosis quarantined feedlot only in sealed trucks with a permit issued by TAHC or USDA personnel.

(3) Beef steers and spayed heifers from Mexico may enter as follows.

(A) Beef steers and spayed heifers from accredited free herds certified by the Mexican Federal Department of Agriculture (SARH) as having met the equivalent of United States tuberculosis accredited free herd status may enter without further testing.

(B) When a Mexican state that has implemented the official national Mexican tuberculosis eradication program is found by the Joint United States/Mexican TB Committee to be equivalent in testing eradication, and traceback to a modified accredited tuberculosis United States state, beef steers and spayed heifers from that Mexican state may enter if, within 60 days prior to entry, the entire lot tests negative:

(i) at the ranch of origin under the supervision of SARH; or

(ii) at a TAHC/USDA designated testing pen under the full-time supervision of SARH.

(C) Beef steers and spayed heifers without test within 60 days prior to entry may enter with a negative test of the entire lot at the border. Any positive result will result in refusal of entry for the entire lot.

(D) Beef steers and spayed heifers tested within 60 days prior to entry but not qualifying under this paragraph (c)(3) may enter:

(i) for slaughter; or

(ii) for feeding for slaughter in a tuberculosis quarantined feedlot; or

(iii) for quarantined and retest after 60 days. Following this retest, negative lots can move without restriction. Any positive result in a lot will result in slaughter of the positive animal with consignment of the remainder of the lot to slaughter or to a tuberculosis quarantined feedlot for feeding for slaughter.

(E) Holstein and holstein cross steers are prohibited from entering Texas regardless of test history.

(F) A tuberculosis quarantined feedlot is a feedlot under a plan of restricted movement, approved by the Commission, in which all cattle are classified as exposed to tuberculosis. All tuberculosis exposed cattle moving to the feedlot must be S-branded prior to movement and must move under permit. All other cattle must be "S"-branded prior to or upon arrival at the feedlot. All cattle leaving the feed-lot must go directly to slaughter. Community notification will be accomplished as set out in §35.2 of this title (relating to General Requirements).

(G) These provisions are not applicable to cattle entering from Mexico for the purpose of feeding and return to Mexico for slaughter under the Federal in-bond program.

[(c) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status to be held for purposes other than for immediate slaughter or feeding for slaughter in a quarantined feedlot, shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 60 days and no later than six months after arrival. The test will be performed at the owner's expense.]

(d) Cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status would enter by meeting the requirements for a state with similar status as stated above in subsections (a) and (b) of this section.

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-9333602 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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Chapter 49. Equine

• 4 TAC §49.1

The Texas Animal Health Commission proposes an amendment to §49.1, concerning equine infectious anemia.

The proposed amendment is necessary to require permanent individual identification of tested equine; require testing prior to change of ownership; provide more details on retest of infected equine; and require testing of equine exposed to infected animals.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to advise the public that a more determined effort will be made to eliminate EIA when infection is identified. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, which authorizes the commission to promulgate rules regarding the testing of livestock.

This amendment implements the Texas Agriculture Code, §161.041.

§49.1. Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine.

(a) Official Test. The agar gel immunodiffusion (AGID) test, also known as the Coggins test, [and] the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test and other USDA licensed tests approved by the commission are the official tests for equine infectious anemia (EIA) in horses, asses, mules, ponies, zebras, and any other equine [equidae] in Texas.

(b) Authorization to conduct test. Only United States Department of Agriculture (USDA) approved laboratories are allowed to run the AGID and CELISA tests and all tests will be official. Only test samples from accredited veterinarians or other TAHC authorized personnel accompanied by a completed VS Form 10-11 can be accepted for official testing.

(c) Official Identification of Equine Tested for EIA. Each equine tested for EIA shall be permanently and individually identified by one of the following:

(1) Lip tattoo; or

(2) Hot iron brand or freeze brand; or

(3) TAHC-approved electronic implant device.

(d)[(c)] Official test document. All official blood tests must be accompanied by a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) listing official individual animal identification and the description of the equine [equidae] to include age, breed, color, sex, animal's name [and/or registration number (when applicable)], and distinctive markings [when present] (i.e., brands, tattoos, scars, or blemishes). It must list owner's name, address, the animal's home premise and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The EIA test document shall list one horse only.

(e) Requirements for Change of Ownership. A negative EIA test within the previous 30 days is required for all equine changing ownership in Texas. These tests will be conducted at no expense to the State of Texas. The original copy of the official test document positively identifying the animal shall be offered as proof of a negative test. The change of ownership test requirement may be met by collection of samples at the public auction at the discretion of the sale operator. Equine tested at public auctions must be held in Texas under quarantine until results of the test are known. Exceptions to these test requirements are:

(1) Foals nursing a tested dam;

(2) Equine offered for sale at a public auction that are "S" branded prior to sale, held in isolation at the auction, and moved to slaughter accompanied by a VS 1-27 permit.

(f) [(d)] Reactor. A reactor is any equine [equidae] which discloses a positive reaction to an [the] official test. [The individual collecting the test sample must notify the animal's owner of the quarantine within 48 hours after receiving the results.]

(g)[(e)] Retest of reactors. Equine [Equidae] which have been disclosed as reactors may be retested prior to branding provided:

(1) owners or their agents initiate a request [in writing] to the TAHC Area Director of the area where the horse is located; [within 48 hours following notification of test results. A retest will not be granted unless the official results of the initial test have been received in the Texas Animal Health Commission office;]

(2) Retests are conducted within 30 days after the date of the original test; and

(3) Blood samples for retests are collected by the person who collected the sample for the first test or by TAHC personnel, and the blood samples are submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing; and

(4) the individual collecting the retest sample is provided documentation that the animal being retested is the same as the one shown positive on the initial test and can verify the retested equine as being the same as shown on the original test document; and

(5) the positive animal must be held in isolation at least 200 yards from other equine after the time of the quarantine issuance.

[(2) all retests be conducted by the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) at College Station or Amarillo. Retests must be conducted within 30 days after date of the original test; and

[(3) the individuals conducting the retest verify the retested equidae as being the same as shown on the original test document. This verification shall be in writing on the Form VS 10-11. The retest permit shall accompany the serum sample and Form VS 10-11 to the TVMDL. Laboratories conducting the E.I.A. (Coggins) test are prohibited from conducting the retest if the verification and retest permit are not submitted with the serum sample. Upon completion of the test, the laboratory shall forward the results of the Texas Animal Health Commission.]

(h) [(f)] Official identification of reactors. A reactor to the official test must be permanently identified using the National Uniform Tag Code number assigned by the USDA to the state in which the reactor was tested followed by the letter "A." (The code for Texas is 74A.) The reactor identification must be permanently applied by a representative of the Texas Animal Health Commission who must use for the purpose of identification, a hot iron brand or freeze-marking brand. The brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Reactors must be branded within ten days of the date the laboratory completes the test unless the equine [equidae] is destroyed. Any equine [equidae] destroyed [prior to branding] must be described in a written statement by the accredited veterinarian or other [authorized] personnel authorized by the commission certifying to the destruction. This certification must be submitted to the Texas Animal Health Commission promptly.

(i)[(g)] Quarantine of reactors. Any equine animal found to be a reactor to the official test will be quarantined by a representative of the Texas Animal Health Commission to the premises of its home, farm, ranch or stable until natural death, disposition by euthanasia, slaughter, or disposition to a Texas Animal Health Commission approved [,] diagnostic or research facility. The quarantine shall restrict the infected equine to isolation at least 200 yards away from other equine.

(j) [(h)] Movement of reactors. Following official identification, a reactor must be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized personnel when moved from its home premises either:

(1) directly to a livestock market for sale directly to slaughter provided the reactor horse is quarantined at the market in isolation from other horses; or

(2) directly to a slaughter plant; or

(3) directly to an approved diagnostic or research facility.

(k) Requirements for Testing Equine Exposed to Infection. All equine determined to have been exposed to an EIA positive animal within the six months previous to identifying the positive animal shall be tested. Nursing foals are exempt from testing. Equine may be considered exposed when they:

(1) are on the same premise with the infected animal; or

(2) had been on the same premise with the infected animal; or

(3) Are on a premise within 200 yards of any premise where the infected animal was maintained; or

(4) Had been on a premise which was within 200 yards of any premises where the infected animal was maintained.

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-9333603

Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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• 4 TAC §49.2

The Texas Animal Health Commission proposes an amendment to §49.2, concerning interstate movement requirements.

The proposed amendment is necessary to allow "S" branded equine to enter a Texas livestock market from out of state and be sold for slaughter purposes. It further provides for movement of untested equine from a premise of origin in another state to a Texas market for "S" branding prior to sale.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is to advise the public that untested equine from other states may move to slaughter through Texas markets provided they are "S" branded either prior to entry into the state or if moving from the premise of origin may be "S"-branded at the market prior to sale. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, which allows the commission to regulate the movement of livestock from stockyards; and §161.081, which allows the commission to regulate the movement of livestock into the state.

No other section of the Agriculture Code is affected by this proposed amendment.

§49.2. Interstate Movement Requirements.

(a) Equine Infectious Anemia (EIA) Requirements. All horses, mules, asses, ponies, zebras and any other equine [equidae] must have a negative agar gel immunodiffusion (AGID) test or a negative Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test for EIA within 12 months prior to entering Texas. The negative test results together with the date of the test and name of the laboratory conducting the test must be shown on the Certificate of Veterinary Inspection. Only test results from USDA approved laboratories are acceptable. Exceptions to these requirements are:

(1) equine [equidae] consigned directly to an approved slaughtering establishment accompanied by a prior permit issued by the Texas Animal Health Commission;

(2) equine [equidae] that have been "S" branded and consigned to a livestock market for sale to slaughter accompanied by a VS 1-27 or directly to an approved slaughter establishment accompanied by a VS 1-27 permit;

(3) equine from a premises of origin consigned to a livestock market to be "S" branded and permitted to slaughter;

(4)[(3)] equine [equidae] may enter Texas when consigned directly to a veterinary hospital or clinic for treatment or for usual veterinary procedures when accompanied by a prior permit issued by the Texas Animal Health Commission. Following release by the veterinarian, equine [equidae] must be returned immediately to the state of origin by the most direct route.

(b) Fever tick requirements. Equine [Equidae] originating in a fever tick infected area must be accompanied by a certificate issued by an authorized state or federal inspector showing them free of fever tick infestation or exposure thereto and dipped in a recognized dipping solution. Dipping must be under the supervision of a state or federal inspector immediately prior to shipment, and the equine [equidae] must be transported in clean and disinfected trucks, railroad cars, or other vehicles.

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-9333604 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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Chapter 51. Interstate Shows and Fairs

• 4 TAC §51.2

The Texas Animal Health Commission proposes an amendment to §51.2, concerning entry requirements.

The proposed amendment is necessary to require a negative EIA test on all equine originating in Texas within 12 months prior to entry into any show, fair or exhibition rather than requiring this test only for entry into interstate shows, fairs and exhibitions.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director of program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is to assure a negative test within the previous 12 months before equine can enter any show fair or exhibition in Texas. 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 Jo Anne Conner, Texas Animal Health Commission P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §161.081, which provides the Texas Animal Health Commission with the authority to promulgate rules regulating the movement of animals into the State; and §165. 043, which provides the Commission with the authority to promulgate rules regulating the entry of livestock into exhibitions, shows and fairs.

No other section of the Agriculture Code is affected by this proposed amendment.

§51.2. General Requirements.

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

(d) Entering Shows, Fairs, and Exhibitions.

(1) (No change.)

(2) In-state origin.

(A) Equine. Must have had a negative EIA test within the past 12 months if entering a [an interstate] show, fair or exhibition, (includes playdays, trail rides, ropings, team pennings and any other events where equine are assembled for exhibition, competition, or pleasure events). [where equine remain on the grounds for 48 hours or longer. Equine entered in all other events other than race tracks where paramutual wagering has been authorized by the Texas Racing Commission may enter without restriction.] Horses entering a paramutual track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

(B)-(C) (No change.)

(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-9333605 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-6697

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter B. Determining Residence Status

• 19 TAC §21.38

The Texas Higher Education Coordinating Board proposes an amendment to §21.38, concerning Determining Residence Status (Responsibilities of the Public Institutions of Higher Education). The proposed amendment is being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. Homeless individuals will be defined consistently by public institutions of higher education, and those enrolled in vocational education courses at a public junior college will be allowed to register by paying the resident rather than nonresident tuition rate.

Mack Adams, assistant commissioner for student services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Adams also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the consistent identification of all public institutions.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under Texas Education Code, §54.052, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status (Glossary).

No other section of the Education Code is affected by this proposed amendment.

§21.38. Responsibility of the Public Institutions of Higher Education.

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

(c) Oath of Residency. Each public institution is responsible for incorporating a core of residency questions and an oath of residency into its student application for admission process. The required core of questions will be developed by Coordinating Board staff with the assistance of an advisory committee. Answers to the questions should then be reviewed to determine the student's proper residency classification. If any of the answers raise questions as to the appropriateness of classification, the institution must file and maintain a copy of one or more appropriately dated documents which will certify that the student classified as a resident has legal right to such classification as of the official census date of the semester or term for which enrolling. However, documents which cannot legally or conveniently be reproduced should be observed by an official of the institution and pertinent information about the documents should be noted and signed by the observing official. Such notations should maintained in the school's records for audit purposes. Documents acceptable for this purpose include, but are not limited to:

(1)-(14) (No change.)

(15) for a homeless individual, documentation may consist of written statements from the office of one or more legitimate social services agencies located in Texas, attesting to the provision of services to the individual over the previous 12-month period.

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-9333616 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 483-6160

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TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 3. Landscape Architects

Subchapter B. Registration

• 22 TAC §3.21, §3.25

The Texas Board of Architectural Examiners proposes amendments to §3.21 and §3.25, concerning eligibility of applicants and deadline for examination. The amendments will clarify the actions which may affect a person's eligibility as a candidate for registration. Amends the application deadline to conform with the Board's offering of the registration examination.

LaVonne Garland, interim director, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated additional cost of $200 in 1994, $190 in 1995, $180 in 1996, $170 in 1997, and $160 in 1998. There will be no effect on local government.

Ms. Garland 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 information on the conditions that may affect an applicant to sit for the examination and to provide applicants with notice for a December examination offered by the Board. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be an application fee of $10 in each of the fiscal years 1994-1998.

Comments on the proposal may be submitted to LaVonne Garland, Interim Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78757, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.21. Eligibility.

(a) (No change.)

(b) **Board approval of previously approved non-accredited degrees will end on August 31, 1995.** [Full-time students enrolled as of April 24, 1992, in nonaccredited programs of study in landscape architecture previously approved by the Board will be eligible for admittance to the examination after receiving a degree from that program.]

§3.25. Processing.

(a) All applications and supporting documentation **for the June L.A. R.E.** must be postmarked no later than February 1, **and September 15 for the December L.A.R.E.,** [(beginning 1991 thereafter)] or delivered to the Board office no later than 5:00 p.m., **the deadline** [on that] date, except where that date falls on a Saturday or Sunday **or federal holiday**, in which case the date shall be the following state working **day** [Monday].

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

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

Issued in Austin, Texas, on December 13, 1993.

TRD-9333613 LaVonne Garland
Interim Director
Texas Board of Architectural Examiners

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 458-1363

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Subchapter C. Written Examinations

• 22 TAC §3.42, §3.43

The Texas Board of Architectural Examiners proposes amendments to §3.42 and §3.43, concerning the schedule of dates of written examinations administered by this Board to candidates. The amendments will advise candidates of the date when they will be notified of the examinations.

LaVonne Garland, interim director, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be estimated additional cost of $19,910 in 1994, $21,296 in 1995, $20,420 in 1996, $19,584 in 1997, and $18,748 in 1998. There will be no effect on local government.

Ms. Garland 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 notice of a December examination being offered to candidates for registration by the Board. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be an examination fee per candidate of $335 in 1994, $378 in 1995, $378 in 1996, $378 in 1997, and $378 in 1998.

Comments on the proposal may be submitted to LaVonne Garland, Interim Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78757, (512) 458-1363.

The amendments are proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.42. Schedules. Written examinations will be administered by this Board, in June **and December** of each year, to approved candidates only. Examination format, dates, times, and places will be announced in notices mailed to candidates approximately March 1 and **approximately September 1** of each year.

§3.43. Format.

(a) Examinations offered by the Texas Board of Architectural Examiners will be the landscape architect registration examination (L.A.R.E.) developed by CLARB and as approved for administration on specific dates, in June **and December** of each year. The L.A.R.E. will be the only examination offered for registration.

(b) (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 13, 1993.

TRD-9333614 LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 458-1363

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Subchapter D. Certification and Registration

• 22 TAC §3.69

The Texas Board of Architectural Examiners proposes an amendment to §3. 69, concerning reinstatement of registration. The amendment will explain the criteria for reinstatement of registration.

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

Ms. Garland 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 provide information on the conditions that may affect an application for reinstatement. 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 LaVonne Garland, Interim Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78757, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

§3.69. Reinstatement.

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

(c) A registrant whose certificate of registration has been revoked for a period greater than **five** [three] years **immediately preceding reinstatement application** shall:

(1) be reexamined prior to reinstatement; or

(2) **furnish evidence of registration in another jurisdiction within five years of reinstatement application** [apply for reciprocal registration in accordance with §3.28 of this title (relating to Reciprocal Transfer)].

(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 13, 1993.

TRD-9333615 LaVonne Garland
Interim Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 458-1363

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Subchapter E. Fees

• 22 TAC §3.87

The Texas Board of Architectural Examiners proposes an amendment to §3. 87, concerning the increase of cost of replacement certificate. The amendment will notify registrants of the increase in cost of having a replacement wall certificate made.

LaVonne Garland, interim director, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated additional cost of $5.00 in each of the fiscal years 1994-1998.

Ms. Garland 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 notify registrants of the increase in cost of obtaining a replacement wall certificate. The anticipated economic cost to persons who are required to comply with the section as proposed will be an increase of fee from $20 to $25 per Landscape Architect registrant to obtain a replacement certificate.

Comments on the proposal may be submitted to LaVonne L. Garland, Interim Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78757, (512) 458-1363.

The amendment is proposed under the Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners, with the authority to promulgate rules.

§3.87. Replacement Certificate Fee. A replacement certificate authorized by this board will require remittance of $25 [$20] with a letter of request.

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 13, 1993.

TRD-9333612 LaVonne L. Garland
Interim Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 458-1363

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Chapter 5. Interior Designers

Subchapter B. Registration

• 22 TAC §5.31

The Texas Board of Architectural Examiners proposes an amendment to §5. 31, concerning the registration of applicants. The amendment is necessary to update registration information in this section in order to reflect changes enacted during the last legislative session.

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

Ms. Garland 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 registration and regulation of interior designers in compliance with the law. 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 LaVonne L. Garland, Interim Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78757, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners, with the authority to promulgate rules.

§5.31. Eligibility.

(a) The board shall accept for interior designer registration without examination:

(1) an applicant who files an application with this board no later than August 31, 1994, [1992] and who prior to September 1, 1991, had six or more years total experience credits working independently or in the course of regular employment as a:

(A)-(D) (No change.)

(2) An applicant who files an application with this board no later than August 31, 1994, [1992] and who, prior to September 1 [August 31], 1991, had been:

(A)-(D) (No change.)

(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 13, 1993.

TRD-9333611 LaVonne L. Garland
Interim Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 458-1363

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TITLE 25. HEALTH SERVICES

Part V. Center for Rural Health Initiatives

Chapter 500. Executive Committee for the Center for Rural Health Initiatives

Subchapter C. Community Scholarship Program

• 25 TAC §§500.61-500.73

The Center for Rural Health Initiatives proposes new §§500.61-500.73, concerning the community scholarship program which provides scholarship funds to individuals pursuing certain health care professions.

The new sections are intended to provide definitions; establish membership for the advisory committee; establish eligibility and application requirements; establish criteria for selection; condition of scholarship; provide for disbursement of scholarship funds; establish conditions for breach of contract; allow for the repayment of funds, including enforcement of collection; waivers and suspension; and establish reporting and monitoring requirements.

These sections are proposed to implement the National Health Service Corps Community Scholarship Program.

Mary S. Campbell, rural health specialist, has determined for the first five-year period the proposed sections are in effect there will be fiscal implications for state and local governments as a result of enforcing or administering the sections. State government will be required to provide 25% of the federal grant award of $50,000 or a maximum increase of $31,250 the first year which is dependent on the number of eligible applicants and the cost of the individual scholarship awards. Subsequent years costs will be dependent on 25% of the amount of the federal award. The cost to local government will be 35% of the total amount of the individual scholarship award. There will be no fiscal implications for small businesses.

Ms. Campbell also has determined that for each year of the first five-year period the sections as proposed are in effect the public benefit as a result of enforcing these sections will be to allow the agency to provide scholarship awards to eligible applicants to pursue certain health care professions and to provide practice opportunities in sponsoring rural Texas health professional shortage areas which will provide an increase in access to primary care for the citizens of that area. There will be no anticipated costs to persons who comply with the proposed sections. However, if an individual does not fulfill the obligation of the scholarship, the individual will be assessed the principal of the scholarship plus 25% simple interest and any costs associated with collection.

Written comments on the proposed sections may be submitted to William J. Lydon, Administrator, Rural Scholar Program, Center for Rural Health Initiatives, P.O. Drawer 1708, Austin, Texas 78767-1708, within 30 days of publication.

The sections are proposed under the Health and Safety Code, §106.003, and House Bill 2241, 73rd Legislature, 1993, which provide the Executive Committee of the Center for Rural Health Initiatives with the authority to adopt rules to implement the Center's program.

The proposed sections affect the Health and Safety Code, Chapter 106.

§500.61. Purpose and Administration.

(a) The purpose of this subchapter is to implement the National Health Service Corps Community Scholarship Program to provide funds to sponsors for scholarships. Scholarships shall be used for the education of health care professional students from Health Professional Shortage Areas (HPSAs) in Texas who will return to these areas and provide primary care services. The Center shall assist the sponsors by administering the program.

(b) The Center shall administer the Community Scholarship Program in accordance with Title III of Public Health Services Act, Part D, Subpart III, Section 338L (426 SC 241 et seq).

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

(a) Academic term–Is equal to one of the following:

(1) a semester;

(2) a trimester; or

(3) a quarter.

(b) Center–Center for Rural Health Initiatives.

(c) Executive committee–The executive committee of the Center.

(d) Executive director–The executive director of the Center.

(e) Full-time student–A student enrolled in a health professional education program who is carrying an academic workload determined to be full-time by the institution under standards applicable to all students enrolled in that program.

(f) Health care professional–A certified or licensed health care provider who is a nurse practitioner, physician assistant, medical doctor or doctor of osteopathy.

(g) Health professional education program–A program at an eligible Texas institution of higher education leading to

certification or licensure as a nurse practitioner, physician assistant, medical doctor or doctor of osteopathy.

(h) Health professional shortage area (HPSA)–An area in Texas which has been designated as a health professional shortage area by the U.S. Department of Health and Human Services, Public Health Service, Bureau of Primary Care, Division of Shortage Designation.

(i) Memorandum of understanding (MOU)–An agreement between the Center and the sponsor signed by the individual who is authorized to execute contracts for the sponsor.

(j) Primary care–Health care services in family medicine, internal medicine, pediatrics, obstetrics and gynecology.

(k) Resident of a HPSA–An individual whose permanent home address is in a Texas HPSA.

(l) Rural county–A county in Texas designated as nonmetropolitan by the U.S. Office of Management and Budget.

(m) Scholarship–A monetary award made to an individual for health professional education expenses.

(n) Sponsor–A community organization which provides financial support for a student's health professional education program.

§500.63. Advisory Committee.

(a) The executive committee may appoint an advisory committee to serve in an advisory capacity to the executive committee and assist the Center in activities such as developing the program, reviewing applications for scholarship awards, and proposing marketing and program publicity strategies.

(b) The advisory committee members will serve in a voluntary capacity and shall not be eligible for compensation or reimbursement for personal expenses incurred in performing committee activities.

§500.64. Eligibility Requirements.

(a) Health professional education program. To be eligible for a scholarship under this program, a student must attend a health professional education program that:

(1) is provided by a public institution of higher education as defined in Texas Education Code, §61.003(8), or a nonprofit, independent institution as defined in Texas Education Code, §61.222, or any other nonprofit health-related school or program;

(2) is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, or the Liaison Committee on Medical Examination, or The Texas Board of Medical Examiners, or the American Osteopathic Association, or The Texas State Board of Nurse Examiners for Advanced Nursing Practice; and

(3) follows the Civil Rights Act of 1964 (Public Law 88-353) Title VI in avoiding discrimination in admissions.

(b) Sponsor. To be eligible under this program, a sponsor shall:

(1) be located in a rural Texas HPSA;

(2) be an entity with council members, a board of trustees, or commissioners having perpetuity that:

(A) is responsible to and serves the community where it is located; and

(B) is legally authorized to raise funds and/or accept grants, financial gifts from citizens, scholarship funds or private foundation funds;

(3) commit to fund 35% of the scholarship, which shall include tuition, fees, books, supplies, and transportation, personal and living expenses, as determined by the institution of higher education, for the duration of the student's academic program;

(4) assure that contributions provided in cash by the sponsor will not include any federal or state funds; and

(5) commit to provide a full-time practice opportunity for the student as a health care professional upon completion of the academic program and certification or licensure or certification in the health care profession for which sponsored.

(c) Student. To be eligible for a scholarship under this program, the student shall:

(1) have financial support committed from an eligible sponsor;

(2) be a resident of the same rural HPSA as the sponsor;

(3) be accepted for enrollment or be enrolled full-time in:

(A) a nurse practitioner or physician assistant program; or

(B) the third or fourth year of medical school;

(4) not have defaulted on nor owe a refund on any state or federal aid; and

(5) commit to return to the sponsoring rural HPSA for the same number of years scholarship support is received or for two years, whichever is greater.

§500.65. Application Requirements.

(a) The application shall be coordinated and submitted by the sponsor. The application shall be in a form prescribed by the Center and may include, but is not limited to:

(1) the student's name, birth date, Social Security Number, permanent home address and phone number;

(2) evidence of student eligibility;

(3) the results of one or more interviews with the sponsor;

(4) evidence of academic honors, awards, and community service;

(5) a typed essay of no more than 500 words composed by the student stating the following:

(A) the reason for applying for the scholarship;

(B) the reason for entering the chosen health care profession;

(C) the reason for wanting to practice in a Texas HPSA; and

(D) a description of the health care profession the student is pursuing and the anticipated time to complete the academic program;

(6) no more than three letters of recommendation;

(7) community statement of need; and

(8) evidence of broad community support for the application.

(b) The Center may request additional information and/or interviews from the sponsor and the student as needed.

§500.66. Criteria for Selection.

(a) Initial award. Scholarships shall be awarded based on information provided in the application. If sufficient funds are not available to award scholarships to all eligible students, priority will be given to a student whose permanent address is in a Texas rural entire-county HPSA and is enrolled in or accepted for enrollment in a nurse practitioner or physician assistant program.

(b) Subsequent Award. A student who has received an initial scholarship shall have priority for a subsequent scholarship provided:

(1) the student maintains satisfactory academic progress in the health professional education program as determined by the institution of higher education;

(2) the student authorizes a report from the institution of higher education of the student's academic progress to be submitted to the Center each academic term; and

(3) state funds are available for subsequent award.

§500.67. Conditions of Scholarships.

(a) The annual scholarship award a student receives shall not exceed the annual cost of attendance at the eligible institution of higher education:

(1) the cost of attendance shall include tuition, fees, books, supplies, living expenses, personal and transportation expenses as determined by the institution of higher education's financial aid office, except that the annual living expenses shall not exceed the amount authorized under the Disadvantaged Minority Health Improvement Act of 1990 (Public Law 101-527), §338A(g)(1)(B); and

(2) the Center may reduce the annual scholarship award a student receives by the amount of financial aid the student receives from other sources.

(b) The sponsor shall execute a Memorandum of Understanding with the Center in which the sponsor agrees to at least:

(1) provide 35% of the scholarship in accordance with these rules for the duration of the student's academic program; and

(2) provide a practice opportunity for the student pursuant to the scholarship in the capacity for which sponsored.

(c) The student shall execute a contract with the sponsor and the Center in which the student agrees to:

(1) complete the prescribed health professional education program;

(2) attain certification or licensure in the prescribed health profession in accordance with this subchapter;

(3) return to the sponsoring rural HPSA within 60 days after attaining certification or licensure and practice health care for the same number of years for which scholarship support was received or for two years, whichever is greater.

(d) Students shall agree that, in providing primary care pursuant to the scholarship, they:

(1) will not, in the case of a client seeking care, discriminate on the basis of the individual's ability to pay for care, nor on the basis that payment for care will be made pursuant to the program established in the Social Security Act, Title XVIII and Title XIX; and

(2) will accept assignment under §1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of Title XVIII of such Act, and will enter into an appropriate agreement with the State agencies that administer the State plans for medical assistance under Title XIX of the Act to provide services to individuals entitled to medical assistance under the plans.

(e) For the purposes of any contract executed by the student under this program, the defense that the student was a minor at the time the contract was executed shall not be available to the student in any action regarding the contract.

§500.68. Disbursement of Scholarship Funds.

(a) Before a disbursement is made to a student, the student shall execute a promissory note with the Center to pay all scholarship monies in the event of breach of contract. The promissory note must be cosigned. A cosigner of a promissory note executed under these rules:

(1) shall be a person signing a note, other than the scholarship recipient, who is a citizen or permanent resident of the United States over 21 years of age and who is gainfully employed or otherwise demonstrates financial responsibility; and

(2) is jointly and severally responsible for all promissory notes issued through the program and signed by the student and him or herself; and

(3) may be a relative other than the student's spouse and may not be a student.

(b) For the purposes of any promissory note executed by the student under this program, the defense that the student was a minor at the time such promissory note was executed shall not be available to the student in any action regarding the promissory note.

(c) Before a disbursement is made to a student, the sponsor shall remit to the Center an amount equal to 35% of that disbursement.

(d) Disbursements shall be made according to a schedule determined by the Center.

(e) A State warrant for the prescribed disbursement will be released in the student's name to the financial aid office at the institution of higher education where the student attends. Disbursements will not be sent directly to the student.

§500.69. Breach of Contract.

(a) A contract executed under this subchapter between the Center, the sponsor and the student is a binding contract.

(b) In the event of a sponsor's breach of contract, the Center may assist the student with interim arrangements.

(c) Sponsor.

(1) a sponsor shall be in breach of contract on the date the sponsor failed to meet the conditions of this subchapter;

(2) the sponsor shall notify the Center in writing within two weeks of any change in status;

(3) the sponsor shall be in breach of contract if the sponsor:

(A) fails to provide 35% of the student's costs as determined by the institution of higher education for the duration of the student's prescribed health professional education program; or

(B) fails to provide a full-time practice opportunity for the student as a health care professional in the health care profession for which sponsored immediately upon completion of the academic program and certification or licensure;

(4) if the sponsor is found to be in breach of contract, the Center may require the following:

(A) forfeiture of all claim to funds forwarded to the student as scholarship award;

(B) cancellation of the student's obligated period of service to the sponsor after completion of the health professional education program and certification or licensure; and

(C) reimbursement to the Center of the state and federal portions of the scholarship funds forwarded to the student; and

(D) forfeiture of opportunity to sponsor a student in the future.

(d) Student.

(1) a student shall be in breach of contract on the date the student failed to meet the conditions of this subchapter;

(2) the student shall be considered in breach of contract and shall not be eligible to receive scholarship funds if the student fails to meet any of the conditions of this subchapter. The student shall notify the Center in writing within two weeks of

any change in status. The student shall be in breach of contract if the student:

(A) withdraws from the Community Scholarship Program;

(B) withdraws from the prescribed institution of higher education;

(C) is placed on scholastic probation;

(D) fails to maintain good academic progress according to the institution of higher education the student attends;

(E) fails to remain enrolled full-time in the prescribed health professional education program;

(F) fails to begin or complete the required practicum or residency;

(G) fails to begin the period of obligated service;

(H) fails to complete the period of obligated service as prescribed by these rules; or

(I) fails to enter or complete a residency program in primary care, in the case of medical students.

(3) a student shall sit for the first certification or licensure examination for which eligible upon completion of the prescribed academic program. If certification or licensure is delayed because of failure to pass the test, the student shall retake it the next consecutive time it is offered. If the student fails to become certified or licensed after the second attempt, the student shall be in breach of contract.

§500.70. Repayment.

(a) In the event the student is found to be in breach of contract, the student shall repay the full amount of the scholarship plus interest and reasonable collection fees.

(b) In the event the student has begun but not completed the period of obligated service, the student shall repay a prorated share of the full scholarship plus interest and reasonable collection fees, based on the percent of the period of obligated service which has not been completed.

(c) An interest rate of 35% simple interest shall be assessed to the scholarship commencing with the date of the first disbursement.

(d) The student shall make all repayments directly to the Center, as follows:

(1) the total scholarship plus interest and reasonable collection fees may be repaid to the Center in one-lump sum payment at the beginning of the repayment period;

(2) the total repayment period shall not exceed six months;

(A) forty percent of the total scholarship shall be repaid within 60 days of breach of contract;

(B) the remaining 60% of the total scholarship shall be repaid within six months of the breach of contract; and

(C) a charge of 5.0% of the scheduled payment or $5.00 whichever is less shall be assessed on any payment received later than ten days from the due date of such payment. Such charges shall be collected out of the first payment made in excess of the interest then due.

(e) The sponsor shall receive payments from the Center according to a schedule determined by the Center to repay the sponsor's portion of the repaid amount of loan principal and 35% of the interest.

(f) The Center shall not be responsible for repaying scholarship portions to sponsors in the event the Center is unable to collect repayment from the student.

§500.71. Enforcement of Collection.

(a) The Center shall initiate collection procedures against a student who fails or refuses to repay a scholarship within six months of the date of breach of contract.

(b) The student's name and last known address and other information shall be reported to the attorney general.

(c) Suit for the remaining sum shall be instituted by the attorney general or any county or district attorney acting on behalf of the attorney general in the county of the student's residence or in Travis county, unless the attorney general finds reasonable justification for delaying suit and so advises the Center in writing.

(d) Should the default continue beyond 60 days from the date suit service was obtained, the Center will cause a judgement to be entered which may be filed in the county of record where the service was obtained. The Center will release the judgement once the student has completed the repayment of the debt as stipulated in the judgement.

(e) The Center shall request the institution of higher education to cause all the student's records, including transcripts, to become unavailable to the student or any other person outside the institution until the participating institution has been notified that the default has been corrected.

(f) The student shall be responsible for the payment of principal and all accrued charges including interest, late charges, skiptracking fees, court costs and attorney fees.

§500.72. Waivers and Suspensions.

(a) The Center shall have the authority to cancel a student's service or repayment obligation if it determines:

(1) on the basis of a sworn affidavit of a qualified physician that the student is unable to complete an academic program, practicum or residency, or attain certification or licensure, or practice health care because of a total and permanent disability; or

(2) on the basis of a court-certified copy of a death certificate, or other evidence of death that is conclusive under state law, that the student has died.

(b) The cosigner of the promissory note shall not be held responsible for scholarship repayment, accrued interest or other charges if the student dies or becomes totally and permanently disabled.

§500.73. Reporting and Monitoring.

(a) The Center shall monitor the practice locations of students during their periods of obligated service.

(b) The financial aid office at each institution of higher education in which a student is enrolled under this program shall report to the Center each academic term on the student's academic progress using an authorized statement of release in accordance with the Open Records Act.

(c) The Center shall report to the sponsor on the student's academic progress.

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 15, 1993.

TRD-9333656

Laura M. Jordan
Executive Director
Center for Rural Health Initiatives

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 479-8891

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.7

The Texas Department of Insurance proposes an amendment to §7.7, concerning subordinated indebtedness, surplus debentures, surplus notes, premium income notes, bonds, or debentures, and other contingent evidences of indebtedness. These amendments are necessary to implement amendments to the Insurance Code, Article 1.39, enacted by passage of House Bill 1461, 73rd Legislature, 1993. The Insurance Code, Article 1.39, provides for the regulation of the issuance of subordinated indebtedness by insurers. The amendments to paragraphs (a)(2) and (c)(2) redefine the minimum surplus or floor consistent with the statute. The change to paragraph (a)(3) adds a definition for "property". The amendment to paragraph (b)(2) describes acceptable consideration received by an insurer in return for the issuance of subordinated indebtedness. The change to paragraph (b)(3) makes any agreement made under the Insurance Code, Article 1.39 and this section subject to other applicable provisions of the Insurance Code. The amendment to paragraph (c)(4) provides that an amount accumulated in a sinking fund is a legal liability and a financial statement liability. Paragraph (c)(6) requires notification to the department within ten days of the issuance of subordinated indebtedness where the holder is not an affiliate. Paragraph (c)(7) requires notification to the department at least ten days prior to the payment of principal or interest. Subsection (d) is deleted. Subsection (e) is renumbered and a change to paragraph (d)(3) provides that an insurer holding subordinated indebtedness may report it as an asset equal to the amount then due and payable under the terms of the subordinated indebtedness agreement.

Sandra A. Autry, associate commissioner for financial, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Ms. Autry also has determined that there will be no effect on local employment or local economy.

Ms. Autry also has determined that, for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be more effective regulation of insurers. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large businesses. There is no anticipated economic cost to persons or entities who are required to comply with the sections, as proposed, other than the minimal cost of completion of the appropriate forms.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the Texas Register to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra A. Autry, Associate Commissioner for Financial, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Chief Clerk's Office.

The section is proposed under the Insurance Code, Articles 1.39, 1.11 and 1. 03A. Article 1.39 regulates the issuance of subordinated indebtedness. Article 1.11 authorizes changes in the forms of the annual statements required of insurance companies. 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.

The following articles of the Insurance Code are affected by this rule: Articles 1.11, 1.29, 1.39, 11.16, 17.17, 19.07, and 21.49-1.

§7.7. Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness.

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

(1) (No change.)

(2) Minimum surplus or floor-The amount of surplus specified in the written agreement evidencing the subordinated indebtedness which may not be used for payments or repayments of subordinated indebtedness and which amount must exceed the **greater** [sum] of the following:

(A) **a minimum surplus stated and fixed in the agreement,** or [10% of the face amount of the subordinated indebtedness; plus]

(B) **a minimum surplus of $500,000 for that insurer.** [the greater of:

[(i) the statutory minimum capital and surplus required by statute, rule, or regulation applicable to the issuing insurer, or

[(ii) the total stated capital and surplus of the insurer immediately before the issuance of the subordinated indebtedness. The commissioner may approve an amount greater or less than 10% of the face amount of the subordinated indebtedness if the commissioner is satisfied such amount is appropriate, considering the financial condition of the insurer.]

(3) Property-Any asset of readily determinable value that is an authorized and otherwise qualifying investment for the insurer issuing the subordinated indebtedness.

(4)[(3)] Subordinated indebtedness-Any contingent indebtedness issued by an insurer for which such insurer assumes a subordinated liability for repayment of principal and payment of interest pursuant to a written agreement providing for payment only out of that portion of an insurer's surplus that exceeds a minimum surplus stated in such agreement. Subordinated indebtedness includes advances made in accordance with the Insurance Code, Articles 11.16, 17.17 and 19.07, and surplus notes, as herein defined.

(5)[(4)] Surplus notes-Surplus notes, also known as "surplus debentures", "contribution certificates", "surplus capital notes", and "premium income notes, bonds, or debentures", however denominated, which are financing vehicles that increase the surplus of an insurer.

(b) General Provisions.

(1) (No change.)

(2) The consideration received by an insurer in return for the issuance of subordinated indebtedness shall be in the form of cash, cash equivalent securities, [or] government backed obligations, or **property** of readily determinable value. [However, in the instance of an acquisition of an insurer, the commissioner may give consideration to other assets having a readily determinable value acceptable to the commissioner. Additionally, in] In the instance of an issuer required by **the department** [this agency] to increase its surplus as regards policyholders, the subordination of a current liability owed by the issuer to the prospective holder of the subordinated indebtedness, may be considered in an amount acceptable to the commissioner.

(3) Any agreement made pursuant to the Insurance Code, Article 1. 39, and this section, shall be subject to other applicable provisions of the Insurance Code, including Articles 1.29 and 21.49-1 [When considering applications made pursuant to the Insurance Code, Article 1.39, and this section, the commissioner will consider other applicable provisions of the Insurance Code, including Articles 1.29 and 21.49-1].

(c) Written Agreements. When issuing subordinated indebtedness, the insurer must execute a written agreement with the creditor, providing the following:

(1) (No change.)

(2) the minimum surplus or floor shall exceed the **greater** [sum] of the following:

(A) **a minimum surplus stated and fixed in the agreement; or** [10% of the face amount of the subordinated indebtedness (provided, however, that the commissioner may approve an amount greater or less than 10% of the face amount of the subordinated indebtedness if the commissioner is satisfied such amount is appropriate, considering the financial condition of the insurer) ; plus]

(B) **a minimum surplus of $500,000 for that insurer.** [the greater of:

[(i) the statutory minimum capital and surplus required by statute, rule, or regulation applicable to the issuing insurer; or

[(ii) the total stated capital and surplus of the insurer immediately before the issuance of the subordinated indebtedness];

(3) **repayment provisions shall be clearly set forth in the written agreement** [all payments of principal and interest shall be subject to the prior approval of the commissioner];

(4) if the subordinated indebtedness is in the form of a premium note, bond, or debenture, which includes a provision for the payment or repayment only out of a sinking fund established by the insurer by setting aside a specified percentage of the insurance premium income collected by the insurer during a specified period, all payments must be made from the established sinking fund, subject to the minimum surplus stated in the written agreement, **and such amount accumulated and held in the sinking fund shall be a legal liability and financial statement liability of the insurer;** [and such payment requires the prior approval of the Commissioner; and,]

(5) in the event of liquidation, payment of interest and repayment of principal under the written agreement are subordinated to policyholder and beneficiary claims;[.]

(6) an insurer which is the issuer of such an agreement, if not an affiliate as defined in the Insurance Code, Article 21.49-1 of the creditor, shall notify in writing within ten days of issuance, the Financial Analysis Unit, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099, and provide a copy of the written agreement for informational purposes; and

(7) an insurer which is the issuer of such an agreement shall notify the Financial Analysis Unit, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099, at least ten days prior to the payment of principal or interest.

[(d) Filing Requirements.

[(1) All subordinated indebtedness issued by an insurer is subject to the prior approval of the commissioner, regardless of amount. Such applications shall be filed with the Holding Company Activity, Mail Code 304-2A, Texas Department of Insurance, P O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104.

[(2) Applications for approval of the payment of interest or repayment of principal are subject to the prior approval of the commissioner and shall be filed at least 30 days prior to the date of the proposed payment, or such shorter period as the commissioner may permit. Payment of interest or repayment of principal to an affiliate of an insurer may be made within the time periods specified in the Insurance Code, Article 21.49-1, §4(d)(1) or §4(d)(2), provided the commissioner has not disapproved such payment within such periods. Payment of interest or the repayment of principal to an affiliate, officer, director, or third party not subject to the Insurance Code, Article 21.49-1, §4(d)(1) or §4(d)(2) may be made 35 days after the filing of the application provided the commissioner has not disapproved such payment within such period. No such application shall be deemed filed until the date all material required and sufficient to constitute a full application has been provided.

[(3) The written application for approval of the issuance of subordinated indebtedness shall include at least the following:

[(A) the nature and purpose of the transaction;

[(B) the nature and amounts of any transfers of assets between the parties to the transaction;

[(C) the identities of all parties to the transaction;

[(D) whether any officers or directors of a party are pecuniarily interested in the transaction;

[(E) a copy of any agreement between the parties relating to the transaction; and,

[(F) evidence that the transaction will not adversely affect the interests of policyholders.

[(4) The written application for approval of the payment of interest or the repayment of principal of subordinated indebtedness shall include at least the following:

[(A) the nature and amounts of any payments or transfers of assets between the parties to the transaction;

[(B) the identities of all parties to the transaction; and,

[(C) evidence that the repayment or payment is appropriate considering the financial condition of the insurer.

[(5) A current financial statement dated not earlier than 60 days before the application date must be filed with the application for approval of the payment of interest or repayment of principal which demonstrates the existence of sufficient surplus in excess of the minimum surplus, and a statement by the chief executive officer of the insurer that the insurer's current total surplus is in such amount that payment or repayment as of the payment date will be only from surplus in excess of minimum surplus and will not adversely affect the insurer's current financial condition.

[(6) Applications for approval of the issuance, payment of interest, or the repayment of principal, must meet the following standards:

[(A) the terms shall be fair and equitable;

[(B) the books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and,

[(C) minimum surplus and the insurer's surplus as regards policyholders following such payment of interest or repayment of principal shall be reasonable in relation to the insurer's outstanding liabilities and adequate to satisfy its financial needs.]

(d)[(e)] Accounting Requirements.

(1) **A loan or advance made under the written agreement, and any interest accruing on the loan or advance, is a legal liability and financial statement liability of the insurer only to the extent provided by the terms and conditions of the loan or advance agreement, and the loan or advance may not otherwise be a legal liability or financial statement liability of the insurer. If a written agreement provides specific terms for the payment of principal and interest, and such terms have been satisfied, then any provision providing that no financial**

statement liability exists shall be considered to be in conflict with the specific terms for the payment of principal and interest; and, for financial statement purposes, the terms for the payment of principal and interest shall result in the reflection of a financial statement liability. [All financial statements published by any insurer or filed with the commissioner must show as a liability that portion of the insurer's surplus that exceeds the minimum surplus as defined in the written agreement to the extent of the unpaid principal balance thereon.]

(2) All agreements shall be clearly reported in an insurer's "Notes to Financial Statements" of the Annual Statement **and shall disclose all pertinent aspects of payment and prepayment provisions** [indicating that payment of interest and repayments of principal are subject to the prior approval of the commissioner].

(3) An insurer holding a subordinated indebtedness of another insurer may report it as an admitted asset equal to the amount **then due and payable under the terms of the subordinated indebtedness agreement** [approved by the commissioner for payment by the issuer but not yet paid].

(e)[(f)] Applicability to Foreign Insurers. The provisions of this section shall apply to insurers domiciled in another state unless such other state regulates the issuance [and payment or repayment] of subordinated indebtedness under laws, rules, or bulletins that the commissioner finds are substantially similar in substance and effect to Texas law and rules. To pursue this exception, the insurer shall provide, upon request, to the commissioner evidence of similarity in the form of statutes, regulations, and interpretation of the standards utilized by the state of domicile.

[(g) The provisions of this section apply to subordinated indebtedness issued on or after January 1, 1992.]

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 15, 1993.

TRD-9333691 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 463-6327

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• 28 TAC §7.84

The Texas Department of Insurance proposes new §7.84, concerning the frequency of examinations of insurance carriers. The new section is necessary to implement an amendment to Insurance Code, Article 1.15, made by House Bill 1461, 73rd Legislature, 1993, that authorizes the commissioner to extend the interval between statutorily required examinations of insurance carriers. The amendment directs the commissioner to adopt rules governing the determination of whether the financial strength of a carrier justifies deferment of an examination. The new section defines certain terms used in the section, describes the applicability of the section and describes the conditions that must exist for the commissioner to make a determination that the insurance carrier's financial strength justifies deferment of an examination.

Sandra Autry, associate commissioner for the financial program, Texas Department of Insurance, has determined that for the first five-year period the section in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. Ms. Autry also has determined that there will be no effect on local employment or local economy.

Ms. Sandra Autry has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of the section will be a more efficient utilization of the department's examination staff. There will be no effect on small businesses.

Comments on the proposed new section must be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Linda K. Von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra Autry, Associate Commissioner-Financial Program, P.O. Box 149104, MC 305-2A, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Office of the Chief Clerk.

The new section is proposed under the authority of the Insurance Code, Articles 1.15, and 1.03A. Article 1.15 authorizes the commissioner to adopt rules governing the determination of the financial strength of a carrier for the purpose of determining whether the examination interval of the carrier required by Article 1.15 could be extended. Article 1.03A authorizes the commissioner to determine rules for general and uniform application for the conduct and execution of the duties and functions of the department.

The following article of the Insurance Code is affected by this rule. §7. 84-Texas Insurance Code, Article 1.15.

§7.84. Examination Frequency.

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

Carrier-A domestic insurer subject to the examination frequency provided for in Insurance Code, Article. 1.15.

Regular examination-The examination required by the Insurance Code, Article 1.15, §1.

(b) Applicability. This section applies only to those carriers that have been incorporated or organized for more than three years and are due for a regular examination as of December 31, 1993, or later.

(c) Deferment of regular examination. Annually, each carrier due for a regular examination to be conducted in the following year shall be reviewed by the associate commissioner for the Financial Program of the Texas Department of Insurance to determine whether the carrier's financial strength justifies a deferment of the regular examination. The commissioner may defer the regular examination of a carrier for one year if the carrier has undergone a regular examination within the preceding four years and the following conditions have been met at all times subsequent to that last regular examination.

(1) The carrier's actuarial opinions required by the Insurance Code, Articles 1.11 and 3.28 were not adverse or qualified.

(2) The carrier is subject to the requirements of the Insurance Code, Article 1.15A, and the annual audits by its accountant did not indicate the existence of any adverse financial conditions in the carrier.

(3) The carrier has not been the subject of administrative or regulatory actions taken by the Texas Department of Insurance as provided by the Insurance Code, Articles 1.10A, 1.32, or 21.28-A, or similar actions taken by any other regulatory body.

(4) All changes in control of the carrier have been properly approved by the Texas Department of Insurance as required by the Insurance Code, Article 21.49-1.

(5) The carrier has the amount of minimum risk-based capital and surplus required by §7.401 of this title (relating to Minimum Risk-Based Capital and Surplus Requirements for Life, Accident and Health Insurers) or §7.410 of this title (relating to Minimum Risk-Based Capital and Surplus Requirements for Stock Property and Casualty Insurers), or meets the requirements of the Insurance Code, Article 2.20, §(f) (relating to requirements for non-stock property and casualty insurers).

(6) The carrier's unassigned funds (surplus) account is a positive balance.

(7) The carrier has not experienced an operational (net) loss for any calendar year equal to or greater than 10% of its capital and surplus accounts at the beginning of such calendar year.

(8) The carrier's capital and surplus accounts have not decreased 15% or more during any calendar year.

(9) The carrier's investment in bonds designated as Class 3, 4, 5, or 6 by the Securities Valuation Office of the National Association of Insurance Commissioners is less than 200% of the carrier's capital and surplus accounts.

(10) The carrier's net written accident and health insurance premiums (annualized) are less than 350% of its capital and surplus accounts.

(11) The net written premiums (annualized) of a property and casualty carrier are less than 250% of its capital and surplus accounts.

(12) The National Association of Insurance Commissioners has not deemed the carrier to be a priority one company.

(13) The carrier has not appeared as one of the top ten insurers on the complaint ratio listing maintained by the department at any time during the year of the annual review provided for in this subsection.

(d) Nothing in this section shall be construed to limit the commissioner's authority to examine a carrier as frequently as the commissioner deems necessary.

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 15, 1993.

TRD-9333692 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 463-6327

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• 28 TAC §7.87

The Texas Department of Insurance proposes new §7.87, concerning the filing of audit reports of risk pools created under the Local Government Code, Chapter 172, Texas Political Subdivisions Uniform Group Benefits Program. The new section will provide guidance to political subdivisions in filing the audit reports and provide notice to the public of the availability of the audit reports.

Sandra Autry, associate commissioner for the financial program, 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, and that there will be no effect on local employment or local economy.

Ms. Autry 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 administering the section will be the availability of audit reports of these risk pools to the public. There will be no difference in cost of compliance between small and large businesses. There is no anticipated economic cost to persons or entities who are required to comply with the section.

Comments on the proposed new section must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Linda K. von Quintus-Dorn, Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Sandra Autry, Associate Commissioner, Financial Program, Texas Department of Insurance, P.O. Box 149104, MC 305-2A, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Office of the Chief Clerk.

The new section is proposed under the authority of Local Government Code, §172.010(d) and Insurance Code, Article 1.03A. Local Government Code, §172.010(d), authorizes the commissioner of insurance to adopt rules governing the time and manner for filing audit reports of risk pools created under the Local Government Code, Chapter 172, Texas Political Subdivisions Uniform Group Benefits Program. The Insurance Code, Article 1.03A, authorizes the commissioner to determine rules for general and uniform application for the conduct and execution of the duties and functions of the department.

The following are the statutes which are affected by these rules: Local Government Code, §7.87,and §172.010.

§7.87. Risk Pool Audits.

(a) The Local Government Code, Chapter 172, Texas Political Subdivisions Uniform Group Benefits Program, authorizes certain political subdivisions to create risk pools to provide health and accident coverage for political subdivision officials, employees, and retirees.

(b) The Local Government Code, §172.010, requires that an independent auditor perform an annual audit of a risk pool, and that the trustees of the risk pool file a copy of the independent auditor's report with the Texas Department of Insurance.

(c) The independent auditor's report of the risk pool required by the Local Government Code shall be filed within six months of the end of the fiscal year of the risk pool with the Regulatory Monitoring Division, Financial Program, Texas Department of Insurance, P.O. Box 149104, MC 305-2A, Austin, Texas 78714-9104.

(d) The Risk pool audit reports can be inspected during regular business hours at the Texas Department of Insurance, Regulatory Monitoring Division, 333 Guadalupe, Austin, Texas.

(e) Persons desiring copies of such audit reports can obtain copies from the Texas Department of Insurance, Regulatory Monitoring Division, Financial Program, P.O. Box 149104, MC 305-2A, Austin, Texas 78714-9104.

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

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

TRD-9333693 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 463-6327

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Part II. Texas Workers' Compensation Commission

Chapter 165. Rejected Risk: Injury Prevention Services

• 28 TAC §§165.6-165.9

The Texas Workers' Compensation Commission proposes new §§165.6-165.9, concerning employers unable to obtain workers' compensation insurance in the voluntary market who insure with the Texas Workers' Compensation Insurance Fund and are required to obtain a hazard survey and implement an accident prevention plan as a condition of the insurance. This program will eventually replace the program currently in place through the Texas Workers' Compensation Insurance Facility which is implemented through §§165.1-165.5. When the last rejected risk or extraordinary risk employer under the Facility has been through the follow-up inspection process and §§165.1-165.5 are no longer needed to describe the process, those rules will be repealed. Currently proposed new §165.6 describes the identification process and how the employer identified will be notified. Section 165.7 describes the safety consultation required, who is authorized to perform the consultation and what the consequences are for the consultant who fails to perform the survey and report properly. Section 165.8 describes the requirement that the employer who implements an accident prevention program under these rules have an inspection by the Texas Workers' Compensation Commission, Workers' Health and Safety Division. Finally, §165.9 describes the time within which the employer and the Fund can expect to receive a report from the commission covering the follow-up inspection and what the alternatives are when the inspection shows that the accident prevention plan was inadequate, was not implemented, or was not completely implemented.

These rules are a valid exercise of the commission's rule-making authority provided in the Texas Labor Code, §402.061, and accomplish the requirements imposed by the

Insurance Code, Article 5.76-4, §10 on the commission.

Janet Chamness, chief of budget, has determined that for the first five-year period these rules are in effect there will be no fiscal implications beyond those described in the financial analysis accompanying House Bill 62 passed by the 1991 Legislature.

There will be no effects on state or local governments nor on employment within Texas as a result of administering and complying with these rules.

Compared to the largest businesses required to comply with these rules the cost for small business to comply will be the same.

Ms. Chamness also has determined that for each year of the first five years the rules as proposed are in effect there will be no public cost related to implementation and enforcement of these rules as proposed, and the public benefits anticipated as a result of enforcing the rules will be that employers who cannot obtain insurance in the voluntary market and who meet the criteria established by the law or the Fund will have to review their safety plans and make sure an adequate plan exists to prevent injuries to their employees.

There is no anticipated economic cost to persons who are required to comply with the rules as proposed beyond the cost established by the legislature in passing House Bill 62.

Written comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Mail Stop #4D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

These new rules are proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Insurance Code, Article 5.76-4, §10 which establishes the requirement for commission involvement with policyholders required by the Fund to develop an accident prevention plan.

These rules affect the Texas Labor Code, §402.061 and the Texas Insurance Code, Article 5.76-4, §10.

§165.6. Identification and Notification of Certain Policyholders Insured by the Texas Workers' Compensation Fund Acting as the Insurer of Last Resort

(a) The Texas Workers' Compensation Insurance Fund (the fund) shall provide a listing of the policyholders requiring accident prevention services to the Texas Workers' Compensation Commission's Division of Worker's Health and Safety (the division). This list shall include, in addition to those employers identified through application of the criteria found in the Insurance Code, Article 5.76-3, §10, employers who have been in business less than three years and meet criteria for a safety consultation established by the fund.

(b) Employers identified as requiring injury prevention services and as an extra-hazardous employer under Texas Labor Code, §§411. 041-411.050, shall also comply with the requirements of the extra-hazardous employer program. The division will notify the policyholder and the fund of the policyholder's responsibilities when the policyholder is identified under this chapter and under Chapter 164.

(c) A policyholder, subject to the Insurance Code, Article 5.76-4, §10(c), whose corporate office is located outside the state of Texas shall, upon receipt of notification, provide the division and the fund the following information:

(1) the name and title of the senior official in Texas with the authority to commit funds and to establish policy, procedures, and abatement actions required to implement the accident prevention plan and correct the hazards identified in the hazard survey;

(2) the official's mailing address; and

(3) the official's business telephone number.

(d) Information required by subsection (c) of this section shall be mailed to the fund at the appropriate address and to the Texas Workers' Compensation Commission, Workers' Health and Safety Division, MS-22, 4000 S. IH-35, Austin, Texas, 78704, or provided by electronic document transfer (FAX) to the division at (512) 440-3714.

§165.7. Safety Consultation and Formulation of the Accident Prevention Plan.

(a) Not later than 30 days following the effective date of the policy, or receipt of notice of identification, whichever occurs later, the policyholder shall complete a safety consultation using a source approved by the division pursuant to §164.9 and §164.10 of this title (relating to Approval of Professional Sources for Safety Consultations; and Removal From the List of Approved Sources). The consultation may be provided by:

(1) the division, subject to the conditions specified in §§164. 3, 164.11, and 164.12 of this title (relating to Safety Consultation; Request for Safety Consultation from the Division; and Reimbursement of Division for Services Provided to Extra-Hazardous Employer);

(2) the policyholder's insurance carrier; or

(3) another professional source.

(b) The division shall provide a list of approved professional sources for inclusion with the notification letter to each policyholder notified.

(c) The safety consultant shall conduct a hazard survey at each appropriate job site of the policyholder and prepare a hazard survey report. The report shall be in a written format prescribed by the commission and shall include a description of any hazardous conditions or practices identified, along with recommendations for controlling the identified hazardous conditions or practices.

(d) The hazard survey report(s), signed by both the consultant and the policyholder, and any attachments shall be filed by the consultant with the division within 24 hours of completing the consultation. Failing to file the survey, or including false or misleading statements, is an additional reason for removal from the list of professional sources as provided in §164.10 of this title (relating to Removal From the List of Approved Professional Sources).

(e) If the initial consultation and report cannot be completed in the time allowed under this rule, the policyholder may apply to the commission for an extension of the time requirements, not to exceed 30 days, upon a showing of good cause.

(f) Formulation of an accident prevention plan shall be in accordance with §164.4 of this title (relating to Formulation of Accident Prevention Plan).

§165.8. Follow-up Inspection of the Employer's Premises by the Division.

(a) The division shall conduct a follow-up inspection to ensure compliance with an accident prevention plan developed in response to a safety consultation required by the fund. This inspection shall be conducted at the policyholder's premises. The inspection shall be conducted not earlier than 90 days or later than six months after the date the accident prevention plan is submitted to the division. If the policyholder has also been identified as extra-hazardous under the Texas Labor Code, §§411.041-411.050, and the criteria stated in Chapter 164 of this title (relating to Workers' Health and Safety-Extra-Hazardous Employer Program), the inspection will follow Chapter 164 criteria and requirements.

(b) The inspection shall be conducted and completed during normal work hours.

(c) The policyholder shall allow the division access to the policyholder's premises, including remote job sites, and employees during normal work hours to conduct the follow-up inspection. An employer who without good cause refuses to allow the division access to the employer's premises may be served with an order of the commission demanding such access. Failure to comply with the commission order will

subject the employer to penalties and sanctions as provided in the Texas Labor Code, §415.021.

(d) The division may require the presence of the professional source consultant that conducted the hazard survey or assisted with the accident prevention plan development during the follow-up inspection. If the professional source is required during the inspection, the division will coordinate that requirement with the policyholder and the professional source, at the policyholder's expense.

(e) At the time of the inspection, the division may consider as evidence of compliance information which includes, but is not limited to, visual verification, written policies and procedures, attendance rosters for training programs, employee interviews, and purchase orders or receipts for equipment or services necessary to support the accident prevention plan.

§165.9. Report of Follow-up Inspection.

(a) As soon as practical, but not later than 30 days from the date of the follow-up inspection, the division shall provide copies of the inspection report to the policyholder, the safety consultant, and the fund.

(b) The report shall be in writing and shall specify whether the policyholder has, or has not, implemented the accident prevention plan or other acceptable corrective measures approved by the division.

(c) If the policyholder is found not to have implemented the accident prevention plan, the report shall also contain a list of the specific areas of the accident prevention plan which have not been implemented.

(d) Failure or refusal to implement the accident prevention plan is an administrative violation with penalty not to exceed $5,000 for each day of non-compliance. The division shall refer the matter to the Commission's Division of Compliance and Practices to pursue the administrative violation if:

(1) the policyholder fails or refuses to implement the accident prevention plan or other suitable hazard abatement measures;

(2) the policyholder does not cancel coverage within 30 days after the date of the division's determination of such failure or refusal; and

(3) the fund notifies the division that the fund will not cancel the coverage.

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

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

TRD-9333642 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Earliest possible date of adoption: January 21, 1994

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 281. Application Processing

Application Processing

- **30 TAC §§281.1, 281.2, 281.22, 281.30-281.32**

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§281.1, 281.2, 281.22, and new §§281.30, 281.31, and 281.32. The amendments and new sections are proposed in order to incorporate new provisions of the Texas Solid Waste Disposal Act (TSWDA), Chapter 361.0232, Texas Health and Safety Code (Vernon 1992) promulgated by the legislature in Senate Bill 1099, 72nd Legislature (1991).

Section 361.0871(c) of the TSWDA specifies that rules adopted under §361. 0232, pertaining to the need for commercial management of hazardous waste, shall provide for expediting the processing of applications for technologies that address the highest priority need as identified by the commission. The document "Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas", prepared by the commission, has identified technologies needed for commercial management on a statewide basis. In addition, other factors to be considered in determining which applications to expedite include regional need and demonstrated innovative technology. These proposed rules provide the framework for determining whether a permit application is for a commercial hazardous waste management technology that is a needed or demonstrated innovative or regional technology.

The new sections and proposed revisions will: delineate a procedure for determining if a permit application for new capacity at a commercial hazardous waste management facility shall be designated as expedited; describe the information which will be prepared by the executive director for consideration by the commissioners; and delineate commercial hazardous waste management facility unit construction and operating schedule notification requirements.

The proposed rules, except §§281 1, 281.2, and 305.149, apply only to permit applications for new capacity to manage hazardous waste from off site at commercial facilities. Chapter 281 is proposed to be amended in the introductory text to reference the Texas Solid Waste Disposal Act.

Section 281.1, relating to Purpose, is proposed to be amended to provide for exceptions due to implementation of the prioritization procedure for commercial hazardous waste management facility permit applications under §§281.30-281.32. This proposed amendment is necessary because certain commercial hazardous waste management facility permit applications will not be able to be processed by the executive director according to the schedule established in Chapter 281. Processing times for the affected applications will be subject to future rulemaking by the commission.

Section 281.2(4) is proposed to be amended by the addition of the terms "or modified" and "and/or municipal hazardous" as a technical amendment to bring the terminology up to date.

Section 281.22, regarding Referral to commission, is proposed to be amended to address the type of information that would be prepared by the executive director at the time of referral. The purpose of adding §281.22(c) is to implement TSWDA §361.0871(c), which instructs the commission, in evaluating an application for a new commercial hazardous waste management facility, to determine the need for the specific technology proposed in the application. This presentation, to be prepared for applications pertaining to processing and disposal capacity, shall summarize the following: the permitted and interim status capacity at commercial hazardous waste management facilities in the state for the specific technology or other technologies which manage the targeted waste streams; the projected statewide demand for the technology, based on the most recent published projections in the commission's Needs Assessment; and any factors pertaining to regional need or innovative technology, as documented by the applicant, if these factors have been successfully documented. This presentation would be made for all new proposed commercial hazardous waste processing or disposal capacity, as directed by TSWDA §361.0871(c). Thus, this presentation would not automatically be made for interim status units, unless these units proposed to manage "new or increased volumes of waste" above that covered by the facility's interim status authorization.

It is not proposed that information be presented for storage-only facilities, because storage-only facilities typically serve a statewide, rather than national, area. Information on the need for storage facilities will be presented on a case-by-case basis, if the situation would warrant the presentation of such information and the applicant has successfully demonstrated state or regional need.

The interim status and permitted capacity to be presented under proposed §281.22(c) would represent the most current information available to the commission. Thus, if the available capacity estimate in the Needs Assessment has not been updated to reflect recent changes to capacity (increases or decreases), the most recent estimates of capacity would be included in the presentation. The

statewide projections of demand to be presented would include the low, medium and high demand forecasts from the most recent Needs Assessment. The purpose of providing the three projections is to illustrate the degree of approximation in the estimates prepared by the commission and how this lack of certainty affects the need for the specific technology in the near future.

Section 281.30, regarding applicability of prioritization procedures for commercial hazardous waste management facility permit applications, is proposed to describe when hazardous waste and underground injection permit applications would be prioritized after receipt of the application by the commission. For permit applications which have not been submitted by the effective date of these rules, the applications are proposed to be prioritized at the time of receipt of the application. It is further proposed that all permit applications for new commercial hazardous waste management capacity which have been submitted to the commission by the effective date would be prioritized, unless the commission permit application review process has been completed. The application review process is completed when a final draft permit has been submitted to the Chief Clerk for publication of notice. If a technology is needed on a statewide basis, then the application shall be designated as expedited. In some instances, applications include capacity which is not needed on a statewide basis. In these cases, the applicants may elect to submit additional information to demonstrate regional need or innovative technology. If greater than 70% of the processing or disposal capacity covered by the permit application is needed on a statewide basis, or is a demonstrated innovative technology or needed regionally, then the application is designated as expedited. Proposed §281.32(e) or (f), describing how an applicant may make a successful demonstration as either an innovative technology or a regionally needed technology, are discussed in more detail later in this preamble.

The intent of §281.30(c) is to clarify that §§281.30-281.32 do not apply to waste management units at a commercial management facility when those units only manage on-site generated wastes unrelated to commercial waste management activities. In a few instances, sites may be engaged in both commercial waste management and manufacturing a product. Units managing wastes resulting from the industrial production process normally do not provide commercial capacity, and permit applications for these units will not be prioritized under these rules.

As noted in §281.30(d), these proposed rules do not limit the ability of the commission to prioritize the review of any permit application from a commercial, captive, captured or on-site facility, based on other factors not addressed by §§281.30-281.32. Examples of other factors for which permit applications might be designated as expedited include, but are not limited to, environmental significance, pollution prevention, or RCRA workplan commitments for funding of agency activities.

Section 281.31, regarding definitions, is proposed to clarify specific terms used in §281.32. New capacity is defined so as to include any unpermitted hazardous waste commercial capacity for which a permit is sought, as well as modifications to existing permit operating conditions, such that additional quantities of waste or types of waste may be managed by a permitted unit. This definition encompasses many different types of sites: so-called "greenfield" sites; proposed units at existing facilities; interim status units which may or may not be operating but, by definition, are not yet permitted; and permit modifications affecting capacity. This broad approach to defining new capacity is taken for the following reason. The stated purpose for identifying needed technologies, (see TSWDA §361.0871(c)) is so that the processing for those applications that address the highest priority need as identified by the commission". Because the statute clearly directs the commission to apply its resources to reviewing applications which would meet the highest priority need, it is consistent with this intention to prioritize all applications for new commercial capacity.

Proposed §281.32 also defines "current management practices" as technologies currently used for the management of specific waste streams generated in Texas. As proposed, current management practices could be determined by analyzing the data submitted by the generators and handlers of hazardous waste. Under this proposal, a current management practice does not have to be at a Texas facility or located at a commercial facility. The purpose of defining "current management practice" is for the applicant to identify a technology (or small group of technologies) which can be compared to the proposed technology, for the purpose of demonstrating that the proposed technology covered by the application is innovative.

Section 281.32, regarding the prioritization process, proposes criteria for identifying or demonstrating that a permit application warrants an expedited review.

For permit applications received after the effective date of the proposed rules, prioritization would occur as soon as practicable after receipt of a Part B hazardous waste permit application. It would be incumbent upon the applicant to include in the Part B application the information identified in the proposed rules, enabling a prioritization to be made at that time. No additional information will be requested from the applicant, except to clarify an assertion by the applicant that the technology is innovative or needed on a regional basis. Applications not providing sufficient information will be deemed "Not expedited" and would be processed according to timeframes currently specified in Chapter 281.

Section 281.32(d), (e), and (f) proposes three conditions that may apply to a processing or disposal technology and under which said technologies covered by a permit application may be designated as expedited. The first condition would be that the technology is needed on a statewide basis, and thus is a technology that has been identified in the Needs Assessment conducted by the commission. Failing this, a technology may still be designated as expedited if it could be successfully demonstrated by the applicant that the technology was needed on a regional basis or that the technology was innovative. In the latter two cases, it is proposed that sufficient information to demonstrate regional need or innovative technology be submitted by the applicant and approved in writing by the executive director.

Section 281.32(d)(2), regarding the evaluation of applications covering multiple units, proposes a methodology for determining if an application will be designated as expedited when the application covers several different types of processing or disposal units which are not all on Table 2 of the Executive Summary of the Needs Assessment. In this case it is proposed that the applicant identify which units function together as a process train, the technology provided by the process train, and the annual capacity of the process train. If the technology of the process train were needed or is a demonstrated innovative or regional technology, then all processing or disposal units which are part of the process train would be designated as expedited also. It is proposed that at least 70% of the processing or disposal annual capacity covered by the application be needed or a demonstrated innovative or regional technology in order for the application to be designated as expedited.

Seventy percent was selected as the threshold because §361.0871(c) of the TSWDA directs the commission to provide for priority consideration in permit processing for those applications that address the highest priority need. Use of a lower threshold for determining whether an application will be designated as expedited might result in the allocation of commission resources to expedited review of applications which propose a significant percentage of annual capacity in technologies which do not meet a "highest priority need". This issue must be weighed against the flexibility needed by commercial waste managers in their facility design, as well as the inefficiencies which might result from applicants arbitrarily splitting up an application in order to obtain an expedited review for part of the proposed capacity. Comments are requested on the use of 70% as the cut-off for this determination.

Section 281.32 proposes that the priority of only the processing or disposal technologies will be considered for the demonstrations made under §281.32(d), (e), or (f). Based on this approach, storage units are considered ancillary to the processing or disposal of the waste, and thus would not be included in the capacity totals or as part of a process train.

Proposed §281.32(e), regarding prioritization of applications for innovative technologies, details two possible ways that an applicant may demonstrate that a technology is innovative. The first approach, described under subsection (e)(1) of this section, would apply to a technology which is a substitute for a technology identified on Table 2 of the Executive Summary of the Needs Assessment. Because an innovative technology would not have been identified by the commission in the Needs Assessment as needed, this paragraph would allow the applicant to demonstrate that the innovative technology would manage waste streams for which a statewide

management need had been identified by the commission. In this case, the applicant would have to show that the proposed innovative technology would not move a targeted waste stream down the state's waste management hierarchy, from the substituted needed technology to a less preferred management method, in accordance with the state's public policy concerning hazardous waste management under §361.023 of the TSWDA. The purpose of this demonstration is to prevent technologies which simply were not identified on Table 2 of the Executive Summary of the Needs Assessment from making the claim that they are "innovative".

Proposed §281.32(e)(2) describes the second approach to demonstrating that a technology is innovative. Under this approach, an innovative technology is not a substitute for a technology identified as needed on a statewide basis by the commission. Instead, the innovative technology is designated as expedited on the basis of the applicant successfully demonstrating that the proposed technology is higher on the waste management hierarchy than the technology currently used for management of the targeted waste streams. For example, if an innovative technology were proposed to recover lead from lead contaminated soils and even if the current management practice (stabilization and land disposal) for managing lead contaminated soils had not been identified as needed by the commission, then the application for the innovative recovery technology would be designated as expedited, because it represents a recovery versus a treatment technology.

Proposed §281.32(e)(2) also requires that, in order to demonstrate the benefits of the innovative technology and assure that the technology will move the waste stream up the waste management hierarchy, the application must demonstrate that the technology provides greater environmental benefits than the current practice(s) used for management of the targeted waste stream(s), by making a favorable comparison of the type and quantity of residuals and products generated by the innovative technology and the current management practice(s). The information required under §281.32(e)(2)(C) would ensure that significant aspects of the proposed innovative technology are being compared. For example, a proposed technology which generated a significantly greater quantity of an equivalent waste than the current management practice would not be considered innovative. Although no specific criteria have been proposed to determine when the environmental costs of a proposed innovative technology outweigh the environmental benefits, this issue would be reviewed on a case-by-case basis as applications are submitted. The residuals which would be considered under this section include all discharges to air and water and solid waste generated. All information on the current practice versus the proposed innovative technology should be presented in a comparable format, for example, as pounds discharged or generated of waste water treatment sludge per ton of waste processed (or some other throughput measure based on waste processing). A comparable format would be a single table displaying all discharges/wastes from the current management practice and the proposed innovative technology. The applicant would also be required to describe how the residuals from the proposed technology would be managed. The purpose of identifying products resulting from the process is to ensure that the process will actually recycle, recover or treat the waste streams, as proposed.

Proposed §281.32(f), regarding regional need for processing or disposal technologies, would allow applicants to demonstrate that their new capacity is needed within a region of the state. It is expected that the applicant would be able to demonstrate this regional need using either the waste management data submitted by waste generators and handlers to the commission or by supplementing the commission data with other data. The applicant must document the waste stream type, form and EPA hazardous waste numbers, the approximate quantity to be managed by the proposed capacity, and generators in the region. It is proposed that the commission would take the following factors into account when reviewing information provided by the applicant: the location, capacity, and capacity utilization of all permitted or interim status capacity for the same technology in the region or state; the quantity of the targeted waste stream(s) which is generated in the region, can reasonably be expected to be managed commercially and which could not be managed by other commercial management capacity in the region; and the annual throughput or annual quantity of the targeted waste stream(s) which could be managed by the proposed technology at the capacity level proposed in the permit application. Targeted waste streams from the region to be managed by the proposed capacity would have to equal or exceed 60% of the processing or disposal capacity proposed in the application in order for the applicant to demonstrate that the technology will serve a regional need. If permitted or interim status commercial capacity for the same technology is available in or near the region and these commercial facilities have adequate capacity to manage the region's targeted waste streams, then this would indicate that there is no regional need for the technology or that the region was too narrowly drawn to account for the available waste management capacity which is proximate to the region's generators.

Proposed §281.32(g), regarding prioritization of commercial hazardous waste management facilities which will only store wastes, sets out two means by which an application for a storage-only facility may be designated as expedited. The first case pertains to storage facilities which are owned by the same parent company as another facility which provides processing or disposal. The priority of the storage-only facility would be the same as that of the technology provided at the processing or disposal facility. The second case, described in proposed §281.32(g)(2), pertains to storage-only facilities which may be needed on a statewide or regional basis. As described in the proposed rule, it would be incumbent upon the applicant to demonstrate statewide or regional need in order for the application to be designated as expedited. The need for storage has not been separately evaluated in the Needs Assessment.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be a minor increase in cost associated with the prioritization of affected permit applications and the preparation and publication of certain summaries of information by the executive director regarding permit applications. These increased costs are not anticipated to be significant and will be met within the existing resources of the agency. There are no fiscal implications anticipated for local governments. These rules will potentially increase the costs for development of permit applications for commercial hazardous waste treatment and disposal facilities. In order to qualify for expedited processing, certain demonstrations must be included in permit applications which are not currently required. While such demonstrations are not required in order to make application, it is anticipated that all commercial applicants will incur whatever costs are involved. It is not anticipated that these additional costs will be significant in terms of the total cost of preparing an application. These costs cannot be determined at this time and will vary with each specific permit application. In addition, it is anticipated that by providing information relevant to permit priority, a faster processing time may result which will result in cost savings which should more than offset any incremental costs of permit development. There are no fiscal effects anticipated for small businesses.

Mr. Minick also has determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be an expedited processing of applications for permits for the types of waste management facilities most needed to handle the quantities of waste generated within the state and provide the most innovative methods of waste management; improvements in the information available to support policy decisions related to waste management capacity; and improvements in public awareness of the need for high-priority or innovative waste management capacity. There are no known costs anticipated to any individual required to comply with these sections as proposed.

A public meeting on this issue will be held in Austin, Texas on January 13, 1994, 12118N. Interstate Highway 35, Building E, Park 35 Circle, at 1:30 p.m., in Room 202S, in order for interested parties to address comments to the commission.

Written comments on the proposal may be submitted to Kathey Ferland, Capacity Assessment Planner, Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas, 78711-3087. Comments will be accepted until 5:00 p.m., 30 days after the date of this publication.

The new and amended sections are proposed under the Texas Water Code, §5. 102 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to

carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

The amendments are also promulgated under the Texas Solid Waste Disposal Act, §361.017 and §361.024, Texas Health and Safety Code, Chapter 361 (Vernon 1992) which gives the Texas Natural Resource Conservation Commission the authority to regulate solid and hazardous wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§281.1. Purpose. It is the intent of the Texas Natural Resource Conservation Commission to establish a general policy for the processing of applications for permits, licenses and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is the policy of the commission that applications for permits, licenses, and other types of approvals listed in §281.2 of this title (relating to Applicability) be processed by the executive director according to the schedule established in this **chapter, except as provided by implementation of the prioritization procedure for commercial hazardous waste management facility permit applications under §§281.30-281.32 of this title (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications; Definitions; and Prioritization Process).**

§281.2. Applicability. These sections are applicable to the processing of:

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

(4) applications for new, **amended, or modified** or renewed industrial solid **and/or municipal hazardous** waste permits filed pursuant to §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to Compliance Plan);

(5)-(9) (No change.)

§281.22. Referral to Commission.

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

(c) After an application under this section for a permit authorizing proposed commercial hazardous waste management units providing new or previously unpermitted capacity is determined by the executive director to be technically complete, the executive director shall prepare a summary of the most recent information on the need for the proposed processing or disposal technology, including at least the following information:

(1) Estimated current statewide capacity for the technology;

(2) Projected estimated statewide demand from the most recent Needs Assessment, as defined under §281.31 of this title (relating to Definitions); and

(3) Regional factors documented by the applicant if a regional need has been demonstrated.

§281.30. Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications.

(1) The following applications for permitting of new capacity at commercial hazardous waste management facilities shall be prioritized as specified in §281.32 of this title (relating to Prioritization Process):

(A) Permit applications submitted after the effective date of this section; and

(B) Permit applications submitted prior to the effective date of this section, except as provided under paragraph (2) of this section.

(2) Prioritization in accordance with §281.32 of this title (relating to Prioritization Process) shall not be made for applications for permitting of new capacity at commercial hazardous waste management facilities for which notice under §305.100 of this title (relating to Notice of Application) has been issued prior to the effective date of this section.

(3) This section, §281.31, (relating to Definitions), and §281.32 of this title do not apply to an application for permitting of unit(s) at a commercial hazardous waste management facility if the unit(s) is to be used solely for the management of wastes generated at the facility which are not the result of commercial hazardous waste management activities.

(4) Nothing in this rule shall limit the ability of the commission to prioritize any permit application.

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

Commercial hazardous waste management facility–Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

Current management practice(s)–The most commonly used technologies for processing or land disposing of targeted waste stream(s) generated in the State of Texas, as evidenced by the most recent computerized annual or monthly waste management reports submitted by waste handlers to the commission.

Needed technology–A technology included in Table 2 of the Executive Summary of the most recent publication of the Needs Assessment. Technologies on Table 2 of the Executive Summary of the Needs Assessment are demonstrated processing or disposal technologies which are needed on a statewide basis.

Needs assessment–Texas Natural Resource Conservation Commission document, a copy of which is available for inspection at the library of the Texas Natural Resource Conservation Commission, located in Room B-20 of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, entitled "Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas" dated February 28, 1992 and its amendments or updates.

New capacity–Unpermitted volume, quantity, or rate of throughput for the management of hazardous waste at a hazardous waste management facility provided by any of the following: proposed units or systems; interim status units or systems; or modifications to permit operating conditions, such that additional quantities or types of waste would be managed.

Table 2-Table 2 of the Executive Summary of the most recent publication of the commission document entitled "Needs Assessment for Hazardous Waste Commercial Management Capacity in Texas" dated February 28, 1992 and its amendments or updates.

Targeted waste stream(s)–A hazardous waste stream(s) generated in the State of Texas which will be managed by a specific technology at a specific facility. The applicant shall define targeted waste streams, by EPA hazardous waste numbers and the form of the waste, or by other identifiers approved in writing by the executive director.

§281.32. Prioritization Process.

(a) This section specifies how an application for a commercial hazardous waste management facility shall be designated as expedited.

(b) For permit applications received after the effective date of this section, prioritization will occur at the time of re-

ceipt of a Part B hazardous waste permit application.

(c) Permit applications for storage capacity at the same facility or a different facility owned by the same parent company which also offers recycling, processing, or disposal services shall have the same priority as the recycling, treatment or disposal technology with which it is associated.

(d) Prioritization of permit applications for needed, innovative, or regional technologies shall be as follows:

(1) If the technology covered by the application is not identified on Table 2, the applicant may submit the information described under subsections (e) or (f) of this section. If all processing and/or land disposal capacity included in the permit is associated with a needed or demonstrated innovative or regional technology, then the application is designated as expedited.

(2) If more than 70% of the total maximum annual throughput capacity of recycling, processing, and disposal units or process trains covered by the application is associated with a needed or demonstrated innovative or regional technology, then the application is designated as expedited subject to the following applicable requirements:

(A) The applicant must specify whether or not each hazardous waste recycling, processing, or disposal unit is a needed or demonstrated innovative or regional technology;

(B) The applicant must specify whether or not each hazardous waste recycling, processing, or disposal unit, associated with or part of a process train, is a needed or demonstrated innovative or regional technology, based on the following:

(i) For permit applications containing multiple units functioning in series in order to recycle, process, and/or dispose of hazardous waste, the individual units shall be considered part of a process train; and

(ii) Whether or not each unit is a needed, innovative or regional technology shall be evaluated based on the technology represented by the process train. A unit is considered to be a needed, innovative or regional technology if it is associated with or part of a process train which is a needed, innovative or regional technology;

(C) The applicant shall calculate the percentage figure to be used under subsection (d)(2) of this section to determine the priority for the entire application as follows:

(i) Total the maximum annual throughput capacity for hazardous waste recycling, processing, and/or disposal in units or process trains covered by the application that are associated with or identified as a needed or demonstrated innovative or regional technology;

(ii) Divide the total from subsection (d)(2)(C)(i) of this section by the total maximum annual throughput capacity of all recycling, processing, and disposal units and process trains covered by the application; and

(iii) Multiply the quotient from subsection (d)(2)(C)(ii) of this section by 100.

(e) An application including an innovative technology to process hazardous waste shall be designated as expedited if the applicant demonstrates that the proposed innovative technology meets the requirements of subsections (d) and (e)(1) or (2) of this section, and obtains the written approval of the executive director.

(1) The proposed innovative technology must be demonstrated to be a substitute for a technology which is on Table 2. To make this demonstration, the applicant must:

(A) Identify the targeted waste streams and show that the proposed innovative technology would be able to process the same types of waste streams, based on information available in the most recent Needs Assessment, as would be managed by the needed technology for which the innovative technology is proposed to be substituted;

(B) Show that use of the proposed innovative technology would not move a targeted waste stream down the state's waste management hierarchy, from the substituted needed technology to a less preferred management method, in accordance with the public policy concerning hazardous waste management under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon 1992), §261.023.

(2) The proposed innovative technology must be demonstrated to implement the state's public policy on hazardous waste management as specified under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon 1992), §361.023. To make this demonstration, the applicant shall demonstrate to the satisfaction of the executive director that the proposed innovative technology is a more preferred management method, higher in the state's waste management hierarchy, when compared to current management practices used for handling the targeted waste streams, and shall submit at least the following information, to the satisfaction of the executive director, for the targeted waste stream(s), whether managed in or out of the State of Texas, or managed on-site or off-site:

(A) Types and quantities of targeted waste streams generated in the State of Texas;

(B) Current management practice for processing or land disposing of the targeted waste stream; and

(C) A favorable comparison of the type and quantity of residuals and products generated by the innovative technology and current management practices.

(f) If no statewide need has been identified in Table 2 and if an applicant considers that there is a regional need for the proposed technology, then the applicant may submit additional information specified under subsections (f)(1)-(f)(3) of this section to demonstrate that the permit application should be designated as expedited, in accordance with this subsection and subsection (d) of this section. In order for the proposed regional technology to be designated as expedited, the approximate annual quantity of the targeted hazardous waste stream(s) which are generated within the region, which will be processed and/or disposed commercially, and which could not be processed or disposed by other commercial hazardous waste management facilities in the region, shall equal at least 60% of the total hazardous waste capacity of the proposed unit(s). All data used to support this analysis shall be from the Texas Natural Resource Conservation Commission hazardous and industrial waste annual or monthly waste management reports submitted by owners and operators of hazardous waste management facilities, except as noted in this subsection. The applicant will define the region, subject to the written approval of the executive director, which must consist of at least one county and shall not extend outside the State of Texas. The regional waste management analysis under this subsection must include only hazardous wastes generated in the State of Texas. Subject to the written approval of the executive director, a permit application may be designated as expedited based on regional need, in accordance with this subsection and subsection (d) of this section, and provided that the applicant submits the following information:

(1) A description of the targeted waste stream(s) by form and EPA hazardous waste numbers, including the approximate annual quantity generated in the region that is processed or disposed at any commercial hazardous waste management

facility using the same technology. If significant changes in on-site management options have occurred in the region since the preparation of the most recent Needs Assessment, the applicant may document the approximate annual quantity generated, the generator, and type of hazardous waste which will require commercial hazardous waste management, and include this quantity in the applicant's regional analysis. The applicant may also submit data, other than Texas Natural Resource Conservation Commission data, substantiating that there is a regional need, specifying waste stream type, including form and EPA hazardous waste numbers; approximate annual quantity generated; and identity of the generators and their location in the region;

(2) A map delineating the boundaries of the region, and showing the locations of the following:

(A) The facility where the new capacity is proposed; and

(B) All other existing, permitted, or interim status commercial hazardous waste management facilities that offer the same hazardous waste processing and/or disposal technologies in the State of Texas; and

(3) A comparison of the annual capacity of the proposed technology to the quantity of the targeted waste streams which:

(A) Are generated within the region; and

(B) Cannot be processed or disposed by other commercial hazardous waste management facilities within the region.

(g) Permit applications for hazardous waste facilities consisting of only hazardous waste storage unit(s), with no hazardous waste processing or disposal unit(s), shall not be expedited, with the following exceptions:

(1) Permit applications for storage-only facilities associated with a different facility owned by the same parent company which offers recycling, processing, or disposal services using a needed technology, shall be prioritized as provided in subsection (c) of this section; and

(2) Permit applications for hazardous waste storage needed on a regional or statewide basis, provided that the applicant submits documentation consisting of at least one of the following, subject to the written approval of the executive director:

(A) An analysis of targeted waste stream(s) and commercially available waste management technologies, showing that there is no processing or disposal technology commercially available for management of the targeted waste stream(s) in the State of Texas; or

(B) A regional analysis documenting the demand for storage by the region's generators, including the distances hazardous wastes are transported for storage, the quantities transported, and a map showing the locations of commercial storage facilities in the region.

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

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

TRD-9333690 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (521) 463-8069

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Chapter 305. Consolidated Permits

Subchapter G. Additional Conditions for Solid Waste Storage, Processing, or Disposal Permits

• 30 TAC §305.149

The Texas Natural Resource Conservation Commission (TNRCC) proposed new §305.149 in order to incorporate new provisions of the Texas Solid Waste Disposal Act (TSWDA), §361.0232, Texas Health and Safety Code promulgated by the legislature in Senate Bill 1099, 72nd Legislature (1991). Section 305. 149(d) specifies a procedure whereby if the permittee does not receive a written response from the executive director within 90 days of submittal of a proposed modified schedule, then the proposed modified schedule would be in effect until a written response is received by the permittee.

Stephen Minick, division of budget and planning, has determined that for the first five years the section is in effect there will be fiscal implications as a result of enforcement and administration of the section. The effect on state government will be a minor increase in cost associated with the prioritization of affected permit applications and the preparation and publication of certain summaries of information by the executive director regarding permit applications. These increased costs are not anticipated to be significant and will be met within the existing resources of the agency. There are no fiscal implications anticipated for local governments. These rules will potentially increase the costs for development of permit applications for commercial hazardous waste treatment and disposal facilities. In order to qualify for expedited processing, certain demonstrations must be included in permit applications which are not currently required. While such demonstrations are not required in order to make application, it is anticipated that all commercial applicants will incur whatever costs are involved. It is not anticipated that these additional costs will be significant in terms of the total cost of preparing an application. These costs cannot be determined at this time and will vary with each specific permit application. In addition, it is anticipated that by providing information relevant to permit priority, a faster processing time may result which will result in cost savings which should more than offset any incremental costs of permit development. There are no fiscal effects anticipated for small businesses.

Mr. Minick also has determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcement of and compliance with the section will be an expedited processing of applications for permits for the types of waste management facilities most needed to handle the quantities of waste generated within the state and provide the most innovative methods of waste management; improvements in the information available to support policy decisions related to waste management capacity; and improvements in public awareness of the need for high-priority or innovative waste management capacity. There are no known costs anticipated to any persons required to comply with the section as proposed.

A public meeting on this issue will be held in Austin, Texas on January 13, 1994, 12118 North Interstate Highway 35, Building E, Park 35 Circle, at 1:30 p. m., in Room 202S, in order for interested parties to address comments to the commission.

Written comments on the proposal may be submitted to Kathey Ferland, Capacity Assessment Planner, Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas, 78711-3087. Comments will be accepted until 5:00 p.m., 30 days after the date of this publication.

The new section is proposed under the Texas Water Code, §5.103 and §5. 105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code,Texas Solid Waste Disposal Act, and other laws of the State of Texas, and to establish and approve all general policy of the commission. The new section is also proposed under the Texas Solid Waste Disposal Act, §361.07 and §361.024, Texas Health and Safety Code, Chapter 361, which gives the Texas Natural Resource Conservation Commission the authority to regulate solid and hazardous wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§305.149. Construction and Operating Schedules for Commercial Hazardous Waste Management Facilities. Commercial hazardous waste facility permits issued after the effective date of this section shall contain a schedule for construction and operation of each unbuilt or proposed hazardous waste unit(s) or system(s) to be used for processing or disposal of hazardous waste. Except as provided under subsection (d) of this section or unless a longer time frame is approved in writing by the executive director:

(1) Authorization for unbuilt permitted processing or disposal capacity at commercial hazardous waste management facilities shall automatically terminate if construction of the unit(s) or system(s) providing said unbuilt permitted capacity has not commenced within three months of the scheduled construction date;

(2) Authorization for the permitted new processing or disposal capacity at commercial hazardous waste management facilities shall automatically terminate if operation of the unit(s) or system(s) providing the new capacity has not commenced within six months of the scheduled operation date; and

(3) Authorization for the permitted new processing or disposal capacity at commercial hazardous waste management facilities shall automatically terminate if operation of the unit(s) or system(s) providing the new capacity has not commenced within five years from the date of permit issuance.

(4) If a permittee wishes to modify the construction and operating schedule contained in a commercial hazardous waste facility permit, then the permittee may submit a request for a Class 1 modification in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). If the permittee does not receive a written response from the executive director indicating approval, modification or denial of the proposed modified schedule within 90 days of receipt by the executive director of this schedule, then temporary authorization for the capacity covered by the proposed modified schedule shall be in effect until such time as the permittee receives a written response from the executive director.

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 15, 1993.

TRD-9333689 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 463-8069

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Title 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter C. Appraisal District Administration

• **34 TAC §9.401**

The Comptroller of Public Accounts proposes an amendment to §9.401, concerning the application form for a charitable organization property tax exemption. The amendment is necessary because Senate Bill 427, 73rd Legislature, 1993, specified the requirements a non-profit hospital must meet to qualify for the charitable organization property tax exemption. The proposed amendment adds provisions related to these requirements to the rule adopting a model application form for a charitable organization property tax exemption. In addition, the model application form adopted by reference is amended.

Mike Reissig, chief revenue estimator, 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. Reissig 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 150, Austin, Texas 78746-6565.

This amendment is proposed under Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements. The amendments implement the Tax Code, §11.18.

§9.401. Exemption Applications for Charitable Organizations.

(a) All appraisal offices shall prepare applications for charitable organization exemptions and make them available to the public.

(b) Each application form shall provide spaces for the applicant to indicate the following information:

(1) the name and address of the person who completes the application form;

(2) the capacity in which the person who completes the form serves the organization;

(3) the name of the organization and its mailing address;

(4) whether the organization is operated by an individual, an association, a corporation, a foundation, or a trust;

(5) if the organization is a corporation that does not provide a function specified in the Tax Code, §11.18(d)(1), (2), (8), (9) , (12), or (16), whether the corporation is a nonprofit corporation;

(6) the real and personal property upon which the exemption is claimed;

(7) whether the organization owns the property on which the exemption is claimed;

(8) for each parcel of real property, the legal description of the property, the primary use of the property, whether the property is reasonably necessary in performing the organization's functions, any other uses of the property, and all parties other than the applicant organization which have used the property in the year preceding the application;

(9) for each item of personal property, the nature and location of the item;

(10) whether the organization is organized exclusively to perform religious, charitable, scientific, literary, and educational functions;

(11) whether the organization is organized exclusively to engage in and does exclusively engage in one or more of the functions listed in the Tax Code, §11.18(d)(1)-(17), and which functions the organization engages in;

(12) all financial transactions for the preceding year which involved sale of an interest in the organization for gain, transfers of property between the organization and persons having an interest in the organization, and loans between the organization and persons having an interest in the organization;

(13) whether the organization operates, or its charter permits it to operate, in a manner which permits the accrual of profits or distribution of any form of private gain; [and]

(14) where the applicant indicates that it engages in functions listed in the Tax Code, §11.18(d)(15), the following additional information:

(A) whether the organization is governed by a volunteer board of directors;

(B) whether the organization is affiliated with a state or national organization that authorizes, approves, or sanctions volunteer charitable fund raising organizations;

(C) whether the organization qualifies for exemption under the Internal Revenue Code, §501(c)(3), as amended; and

(D) whether the organization distributes contributions to at least five other associations, each of which is governed by a volunteer board of directors, qualifies for exemption under the Internal Revenue Code, §501(c)(3), receives a majority of its annual revenues from gifts and government grants, and provides services without regard to the recipient's ability to pay;[.]

(15) where the organization is a nonprofit hospital and indicates that it qualifies for the exemption provided by the Tax Code, §11.18(d)(1), which of the following requirements the hospital meets:

(A) the hospital provides charity care and government-sponsored indigent health care at a level which is reasonable in relation to the community needs, as determined through the hospital's community needs assessment, the available resources of the hospital, and the tax-exempt benefits received by the hospital;

(B) the hospital provides charity care and government-sponsored indigent health care in an amount equal to at least 4.0% of the hospital's net patient revenue;

(C) the hospital provides charity care and government-sponsored indigent health care in an amount equal to at least 100% of the hospital's tax-exempt benefits, excluding federal income tax;

(D) the hospital has been designated a disproportionate share hospital under the state Medicaid program in one of the previous two fiscal years;

(E) in the tax years before 1996, the hospital provided charity care and community benefits in a combined amount equal to at least 5.0% of the hospital's net patient revenue provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least 3.0% of net patient revenue; or

(F) in the tax years after 1995, the hospital provided charity care and community benefits in a combined amount equal to at least 5.0% of the hospital's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least 4.0% of net patient revenue;

(16) if the applicant indicates that the organization is a hospital that qualifies for the exemption provided by the Tax Code, §11.18(d)(1), but is not a nonprofit hospital as defined by the Health and Safety Code, §311.042, whether the hospital:

(A) is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area; or

(B) meets all of the following criteria:

(i) **is exempt from state franchise, sales, ad valorem, or other state or local taxes;**

(ii) **does not receive payment for providing health care service to any inpatients or outpatients from any source including, but not limited to, the patient or any person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other federal, state, or local indigent care program (payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research); and**

(iii) **does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services;**

(17) statements that:

(i) **a nonprofit hospital qualifying for an exemption under the Tax Code, §11.18(d)(1), must annually file with the appraisal district the report required by the Health and Safety Code, §311.045(b);**

(ii) **the terms "charity care," "government-sponsored health care," "net patient revenue," "nonprofit hospital, " and "tax-exempt benefits" have the meanings set forth in the Health and Safety Code, §311.045(b);**

(18) whether the organization is a nonprofit hospital as defined by the Health and Safety Code, §311.041, that provides health care without receiving any payment for providing these services to inpatients or outpatients from any source, including, but not limited to, the patient or person legally obligated to support the patient, third-party payors, Medicare, Medicaid, or any other state or local indigent health care program.

(c) The appraisal office shall indicate on the application form that the applicant must attach a copy of the charter, bylaws, or other documents adopted by the organization to govern its affairs.

(d) With respect to the documents described in subsection (c) of this section, the application shall contain spaces for the applicant to indicate:

(1) whether the documents pledge the organization's assets for use in performing its charitable functions and the page and paragraph number of such language;

(2) whether the documents require that upon dissolution of the organization that the organization's assets be transferred to a similar organization which is qualified for exemption under the Internal Revenue Code, §501(c)(3), as amended, or to the State of Texas;

(3) whether Internal Revenue Service regulations require that the documents provide for transfer of the organization's assets upon dissolution first to its members and then immediately from its members to a similar organization qualified for exemption under the Internal Revenue Code, §501(c)(3), as amended, or to the State of Texas.

(e) All applications shall require the applicant to sign and date the application and indicate in what capacity he represents the organization.

(f) All applications shall include the following affirmation, above the signature and date spaces and below the spaces for information required by subsections (b)-(d) of this section: "By signing this application, you designate the property described in the attached schedules A and B as the property against which the exemption for charitable organizations may be claimed in this appraisal district. You certify that this information is true and correct to the best of your knowledge and belief."

(g) All applications shall include a [the following] statement **of the penalties for violating the Texas Penal Code, §37.10,** in boldface type beneath the space for the signature and date[: "Under the Texas Penal Code, §37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine of up to $2,000, or a prison term of two to ten years and a fine of up to $5,000].["]

(h) If the chief appraiser routinely requires supporting documentation for any charitable exemption, the appraisal office shall note the types of documentation required on the application.

(i) All applications shall contain the following statement: "This application covers property you owned on January 1 of this year. You must file the completed application between January 1 and May 1 of this year. Be sure to attach any additional documents requested. If the chief appraiser grants the exemption, you do not have to reapply every year. You must reapply if the chief appraiser requires you to do so, or if you want the exemption to apply to property not listed in this application. However, you have a duty to notify the chief appraiser in writing if and when your right to this exemption ends."

(j) The chief appraiser may duplicate Model Form 11.18 or use a different form that sets out the information listed in subsections (b)-(g) and (i) of this section in the same language and sequence as the model form.

(k) In special circumstances the chief appraiser may use a form that provides additional information, deletes information required by this section, or sets out the required information in different language or sequence than that required by this section if the form has been previously approved by the Property Tax Division, Comptroller of Public Accounts.

(l)[(j)] The Comptroller of Public Accounts adopts by reference Form 11.18, Application for Charitable Organization Property Tax Exemption. Copies of the form are available for public inspection at the Office of the Secretary of State, Texas Register Section, or may be obtained from the Comptroller of Public Accounts, Property Tax Division, **P.O. Box 13528, Austin, Texas 78711-3528** [4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565].

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

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

TRD-9333655 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 21, 1994

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

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• 34 TAC §9.404

The Comptroller of Public Accounts proposes an amendment to §9.404, concerning application for exemption of goods exported from Texas ("freeport exemption"). Section 9.404 sets out the contents of the exemption application and adopts the exemption application form by reference. The amendment is necessary because Senate Bill 1487, 73rd Legislature, 1993, amended the Tax Code, §11.251, providing the exemption for goods exported from Texas. The amendment to §11.251 states that property that meets the requirements of the Texas Constitution, Article VIII, §§1-j(a)(1) and (2), and that is transported outside of the state 175 days or fewer after the date the person who owns it on January 1 acquired or imported it into the state qualifies as freeport goods regardless of whether the person owning the goods on January 1 transported them outside of the state.

The proposed amendment revises the information required in the application form to provide that the property owner may claim the exemption regardless of whether the owner is the person who transported the goods outside of the state. The rule adopts an amended application form by reference.

Mike Reissig, chief revenue estimator, 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. Reissig 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 in providing new information regarding tax responsibilities. 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 new section may be submitted to Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 150, Austin, Texas 78746-6565.

This amendment is proposed under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption. The amendment implements the Tax Code, §11.251 and §11.43(a) .

§9.404. Application for Exemption of Goods Exported from Texas.

(a) Appraisal districts shall prepare and make available application forms for the exemption provided by the Tax Code, §11.251.

(b) A form shall require a property owner to provide the following information:

(1) the property owner's name, [street address,] mailing address [if different], and telephone number;

(2) a description of the inventory affected by the exemption;

(3) the total cost of goods sold from inventory held by the property owner in the preceding year;

(4) the total cost of goods sold from inventory that in the preceding year met the criteria set forth in the Tax Code, Texas Constitution, Article VIII, §1-j(a)(1)-(3), excluding the cost of equipment, machinery, or materials that entered into and became part of the inventory described in paragraph (3) of this subsection but did not themselves meet the criteria set forth in the Texas Constitution, Article VIII, §1-j(a)(1)-(3);

(5) a statement that the property owner holds items in inventory that in the current year meet or will meet the requirements of the Texas Constitution, Article VIII, §1-j(a) (1)-(3); and

(6) a statement indicating **the value of freeport goods in** [how long] the property **owner's inventory** [owner has engaged in the business of transporting goods out of this state].

(c) The chief appraiser shall include the following information on the form:

(1) instructions stating that the property owner must apply for the exemption annually;

(2) a **notice of the penalties prescribed** [statement that] under the Penal Code, §37.10, [the penalties] for making or **filing an application containing** a false statement [on the application could include a fine of up to $5,000 and a jail or prison term of up to ten years]; and

(3) a statement that the chief appraiser may require the property owner to submit records verifying the information in the application and that if so required, the property owner must submit the records within 30 days of the request.

(d) The chief appraiser may duplicate Model Form 11.251 or employ a different form that sets out the information listed in subsections (b) and (c) of this section in the same language and sequence as the model form.

(e) In special circumstances the chief appraiser may use a form that provides additional information, deletes information required by this section, or sets out the required information in different language or sequence than that required by this section if the form has been previously approved by the Property Tax Division, Comptroller of Public Accounts.

(f) Model Form 11.251 is adopted by reference. Copies of the form may be obtained **by writing** [from] the Comptroller of Public Accounts, Property Tax Division, **P.O. Box 13528, Austin, Texas 78711-3528** [4301 Westbank Drive, Building B, Suite 100, Austin, Texas

78746-6565].

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

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• 34 TAC §9.405

The Comptroller of Public Accounts proposes an amendment to §9.405, concerning the application form for a residence homestead property tax exemption. The amendment is necessary because House Bill 563, 73rd Legislature, 1993, gives a mobile home owner who wishes to apply for a general residential homestead exemption another option regarding the documents showing ownership that must be filed with the application. The amendment changes the application form, adopted by reference, to reflect this additional option.

Mike Reissig, chief revenue estimator, 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. Reissig 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

This amendment is proposed under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements. The amendments implement the Tax Code, §11.432.

§9.405. Exemption Applications for Residence Homesteads. (Tax Code, §11.432).

(a) All appraisal offices shall prepare and make available applications for residence homestead exemptions.

(b) All applications shall contain spaces for the property owner to provide the following information:

(1) the name and address of the property owner;

(2) the street address or other description of the property, and, if the property is a mobile home, the make, model, and permanent identification number, together with:

(A) a copy of the document of title to the mobile home if the mobile home is eight feet wide or wider, 40 feet long or longer, or occupies an area of 320 square feet, and the document of title has not been canceled; or

(B) a verified copy of the purchase contract showing that the individual applying for the general residence homestead exemption is the owner of the home.

(3) whether the property owner qualifies for the general residence homestead exemption. The application form shall require the property owner to indicate whether he owns the property, whether it was his residential homestead on January 1 of the year for which the application is filed, and whether he has claimed a residential homestead exemption on any other property for the year;

(4) whether the property owner qualifies for over-65 homestead exemptions or for the continuation of a school tax ceiling as an over-55 surviving spouse of a person who died while entitled to the tax ceiling;

(5) whether the property owner qualifies for disability exemptions;

(6) if the property is owned by a cooperative housing corporation, whether the applicant has an exclusive right to occupy the property because he or she owns stock in the corporation; [and]

(7) at the owner's option, the number of acres used for residential purposes; and

(8)[(7)] whether the property owner is applying for the exemption in the current year or is making a late application to qualify for the exemption beginning with the preceding year.

(c) All applications shall require the applicant to sign and date the application.

(d) All applications for residence homestead exemption shall contain a statement indicating that by signing the application, the applicant states that he/she is qualified for the exemptions indicated, and a statement **of the penalties for violating** [that under] the Penal Code, §37.10[, if the applicant intentionally makes a false statement on the application, he or she could receive a jail term of up to one year and a fine of up to $2,000, or a prison term of two to ten years and a fine of up to $5, 000].

(e) All applications shall contain instructions which state that the property owner need not apply for the exemption annually, that the applicant has a duty to notify the chief appraiser in writing before May 1 when his entitlement to the exemption ends, and that the chief appraiser may require the property owner to reapply for the exemption.

(f) Where the application contains or requires other information, the information required by this section shall be printed on the front of the form. Otherwise, the application shall be prepared as a separate form from any other form.

(g) If the chief appraiser routinely requires supporting information or other documents for a homestead exemption, the appraisal office shall note the type(s) of documentation required on the application.

(h) The chief appraiser shall determine each application in accordance with the provisions of the Tax Code, Chapter 11.

(i) With each application form the appraisal office shall provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers.

(j) If the chief appraiser learns of the death of a person qualified for over-65 homestead exemptions and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.

(k) An application for residential homestead exemption form is adopted by reference. Copies of the form may be obtained from the Comptroller of Public Accounts, Property Tax Division, **P.O. Box 13528, Austin, Texas 78711-3528** [4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565].

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

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

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• 34 TAC §9.406

The Comptroller of Public Accounts proposes new §9.406, concerning an exemption application for charitable organizations improving property for low-income housing. The new section sets out the contents of the exemption application, which incorporates the requirements of the Tax Code, §11.181, effective January 1, 1994. The new section is necessary because House Bill 1096, 73rd Legislature, 1993, created the new exemption for charitable organizations improving property for low-income housing.

The new section specifies the language and order of the information in the application form. The new form is similar to the one for charitable organizations with additions reflecting the requirements of the Tax Code, §11.181. The new section adopts the application form by reference.

Mike Reissig, chief revenue estimator, 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. Reissig 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 in providing new information regarding tax responsibilities. 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 new section may be submitted to Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 150, Austin, Texas 78746-6565.

This new section is proposed under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption. The new section implements the Tax Code, §11.181 and §11.43(a).

§9.406. Exemption Applications for Charitable Organizations Improving Property for Low-Income Housing.

(a) All appraisal offices shall prepare applications for charitable organizations improving property for low-income housing exemptions and make them available to the public.

(b) Each application form shall provide spaces for the appraisal office to indicate the name of the appraisal district, address, and telephone number, and the year the exemption is being applied for.

(c) All applications shall contain the following statement: "This application covers property you owned on January 1 of this year. You must file the completed application between January 1 and May 1 of this year. Be sure to attach any additional documents requested. If the chief appraiser grants the exemption, you do not have to reapply every year. You must reapply if the chief appraiser requires you to do so, or if you want the exemption to apply to property not listed in this application. However, you have a duty to notify the chief appraiser in writing if and when your right to his exemption ends."

(d) Each application form shall provide spaces for the applicant to indicate the following information:

(1) the name of the organization, its present mailing address, and telephone number;

(2) the name of the person who completes the application form;

(3) the capacity in which the person who completes the form serves the organization;

(4) whether the organization is operated by an individual, a foundation, corporation, or a trust;

(5) whether the organization is a nonprofit corporation;

(6) whether the organization owns property for the purpose of building or repairing housing on the property, primarily with volunteer labor, and to sell the property without profit to an individual or family satisfying the organization's low-income and other eligibility requirements;

(7) whether the organization engages exclusively in the building, repair, and sale of housing as described in paragraph (6) of this subsection and also in the Tax Code, §11.181(2), and related activities;

(8) whether the organization performs, or its charter permits it to perform, any functions other than those checked in paragraphs (6) and (7) of this subsection;

(9) all financial transactions for the preceding year that involved sale of an interest in the organization for gain, transfers of property between the organization and persons having an interest in the organization, and loans between the organization and persons having an interest in the organization;

(10) list of salaries and other compensation for services paid in the last year, funds distributed to members, shareholders or directors in the last year, and in each case, recipient's name, type of service rendered or reason for payment and amounts paid; and

(11) whether the organization operates, or its charter permits it to operate, in a manner which permits the accrual of profits or distribution of any form of private gain.

(e) The appraisal office shall indicate on the application form that the applicant must attach a copy of the charter, bylaws, or other documents adopted by the organization to govern its affairs.

(f) With respect to the documents described in subsection (d)(11) of this section, the application shall contain spaces for the applicant to indicate:

(1) whether the documents pledge the organization's assets for use in performing its charitable functions and the page and paragraph number of such language;

(2) whether the documents require that upon dissolution of the organization that the organization's assets be transferred to a similar organization qualified for exemption under the Internal Revenue Code, §501(c) (3), as amended, or to the State of Texas;

(3) whether Internal Revenue Service regulations require that the documents provide for transfer of the organization's assets upon dissolution first to its members and then immediately from its members to a similar organization qualified for exemption under the Internal Revenue Code, §501(c)(3), as amended, or to the State of Texas.

(g) Applications shall include a notation regarding the attachment of Schedules A, B, and C describing the property to be exempt.

(h) All applications shall require the applicant to sign and date the application and indicate in what capacity the applicant represents the organization.

(i) All applications shall include the following affirmation, above the signature and date spaces and before the spaces for information required by subsections (d)-(e) of this section: "By signing this application, you designate the property described in the attached Schedules A, B, and C as the property against which the exemption for charitable organizations may be claimed in this appraisal district. You certify that this information is true and correct to the best of your knowledge and belief."

(j) All applications shall include in boldface type beneath the space for the signature and date, a notice of the penalties prescribed under the Texas Penal Code, §37.10, for making or filing an application containing a false statement.

(k) If the chief appraiser routinely requires supporting documentation for any charitable exemption, the appraisal office shall note the types of documentation required on the application.

(l) The applicant shall list on Schedule A, the improved and unimproved real property that the organization repairs, and upon which the exemption is claimed, and for each piece of property, the following additional information:

(1) the name of the owner;

(2) legal description of the property;

(3) primary use of the property;

(4) date of acquisition of the property;

(5) whether the property is reasonably necessary for operation of the association/organization; and

(6) if other individuals and/or organizations have used the property in the past year, the name, dates used, activity, and rent paid.

(m) The applicant shall list on Schedule B, any building the organization owns and uses in the administration of its acquisition, building, repair, or sale of property, and for each building, the following additional information:

(1) the name of the owner;

(2) description of the property;

(3) primary use of the property;

(4) whether the property is reasonably necessary for operation of the association/organization; and

(5) if other individuals and/or organizations have used the property in the past year, the name, dates used activity, and rent paid.

(n) The applicant shall list on Schedule C, any tangible personal property the organization owns and uses in the administration of its acquisition, building, repair, or sale of property, and for each piece of property, the following additional information:

(1) the name of the owner;

(2) whether the property is reasonably necessary for operation of the association/organization; and

(3) the nature and location of the item.

(o) The Comptroller of Public Accounts adopts by reference Form 11.181, Application for Charitable Organization Improving Property for Low-Income Housing Property Tax Exemption. Copies of the form are available for public inspection at the Office of the Secretary of State, Texas Register Section, or may be obtained from the Comptroller of Public Accounts, or by writing the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

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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Chief, General Law Section
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For further information, please call: (512) 463-4028

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• 34 TAC §9.407

The Comptroller of Public Accounts proposes new §9.407, concerning an application for exemption for cotton stored in a warehouse. The new section sets out the contents of the exemption application, which incorporate the requirements of the Tax Code, §11.251 and §11.436, effective January 1, 1994. The section is necessary because Senate Bill 1487, 73rd Legislature, 1993, created the new exemption for cotton stored in a warehouse.

The new rule specifies the language and order of the information in the application form. The form is similar to the one for goods exported from Texas ("freeport exemption"), reflecting the requirements of the Tax Code, §11.251. The rule adopts the application form by reference.

Mike Reissig, chief revenue estimator, 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. Reissig 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 in providing new information regarding tax responsibilities. 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 new section may be submitted to Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 150, Austin, Texas 78746-6565.

This new section is proposed under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption. The new section implements the Tax Code, §11.436 and §11.43(a).

§9.407. Application for Exemption for Cotton Stored in a Warehouse.

(a) Appraisal offices shall prepare and make available application forms for the exemption provided by the Tax Code, §11.436.

(b) A form shall require a property owner to provide the following information:

(1) the property owner's name, mailing address, and telephone number;

(2) location of the warehouse;

(3) if the warehouse is used to store items other than cotton, the other uses and the percentage of the warehouse so used;

(4) the total cost of cotton sold from the cotton stored in the warehouse by the property owner for the year preceding the year of application;

(5) the total cost of cotton sold from the cotton stored in the warehouse that in the preceding year met the criteria set forth in the Tax Code, Texas Constitution, Article VIII, §1-j(a)(1)-(3), excluding the cost of equipment, machinery, or materials that entered into and became part of the inventory described in paragraph (4) of this subsection but did not itself meet the criteria set forth in Texas Constitution, Article VIII, §1-j(a)(1)-(3);

(6) a statement that the property owner holds cotton that in the current year meets or will meet the requirements of the Texas Constitution, Article VIII, §1-j(a)(1)-(3); and

(7) a statement indicating the value of freeport cotton that the property owner holds.

(c) The chief appraiser shall include the following information on the form:

(1) instructions stating that the property owner need only apply for the exemption once unless the warehouse changes ownership, the cotton's qualification for the exemption changes, or the chief appraiser requires a new application;

(2) a notice of the penalties prescribed under the Penal Code, §37.10, for making or filing an application containing a false statement; and

(3) a statement that the chief appraiser may require the property owner to submit records verifying the information in the application and that if so required, the property owner must submit the records within 30 days of the request.

(d) The chief appraiser may duplicate Model Form 11.436 or employ a different form that sets out the information listed in subsections (b) and (c) of this section in the same language and sequence as the model form.

(e) In special circumstances the chief appraiser may use a form that provides additional information, deletes information required by this section, or sets out the required information in different language or sequence than that required by this

section if the form has been previously approved by the Property Tax Division, Comptroller of Public Accounts.

(f) The Comptroller of Public Accounts adopts by reference Model Form 11.436, Application for Exemption for Cotton Stored in a Warehouse. Copies of the forms are available for public inspection at the Office of the Secretary of State, *Texas Register* Section, or may be obtained by writing the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

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 H. Tax Record Requirements

• 34 TAC §9.3004

The Comptroller of Public Accounts proposes an amendment to §9.3004, concerning appraisal records of all property. The amendment is necessary because new legislation requires that additional information appear in the appraisal records. The amendment requires that the appraisal records show specific information related to manufactured homes, and whether personal property is a special inventory.

Mike Reissig, chief revenue estimator, 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. Reissig 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 150, Austin, Texas 78746-6565.

This amendment is proposed under the Tax Code, §5.03, which requires the comptroller to prescribe rules establishing minimum standards for the administration and operation of an appraisal district, and Tax Code, §5.07, which requires the comptroller to prescribe a uniform system to be used by appraisal districts. The amendments implement the Tax Code, §25.03 and §23. 12A.

§9.3004. Appraisal Records of All Property.

(a) All appraisal district offices appraising property for purposes of ad valorem taxation shall develop and maintain appraisal records of all property which each office is required to appraise.

(b) The appraisal records of all property shall be two lists-one list for real property and one list for personal property-and shall contain the following items of information as applicable:

(1) the name and address of the owner or, if the name or address is unknown, a statement that it is unknown;

(2) the legal description of the real property of the owner (this provision shall not be interpreted to require field note descriptions);

(3) the separately taxable estates or interests in real property, including taxable possessory interests in exempt real property;

(4) the general description of taxable personal property and location thereof, if available; [and,]

(5) if the property is a manufactured home, as defined in Texas Manufactured Housing Standards Act, §(3)(s), Texas Civil Statutes, Article 5221f, the permanent identification number(s) or serial number(s) attached to the home, together with the make and model of the home, **its approximate age, general physical condition, and any characteristics that distinguish the home from other manufactured homes;**

(6)[(5)] the appraised value of land and, if the land is appraised as provided by the [Property] Tax Code, Chapter 23, Subchapter C, D, or E, the market value of the land;

(7)[(6)] the appraised value of improvements to land;

(8)[(7)] the appraised value of a separately taxable estate or interest in land;

(9)[(8)] the appraised value of personal property;

(10)[(9)] the kind of any partial exemption the owner is entitled to receive, whether the exemption applies to appraised value, and in the case of an exemption authorized by the [Property] Tax Code, §11.23, the amount of the exemption;

(11)[(10)] whether the property qualifies for an extension of the school tax ceiling as the residence homestead of an over 55 surviving spouse of a person who qualified the homestead for a tax ceiling before his or her death;

(12)[(11)] the tax year to which the appraisal applies;

(13)[(12)] an identification of each taxing unit in which the property is taxable;

(14)[(13)] whether the property qualifies for appraisal at its value as of September 1 of the year preceding the tax year; [and]

(15)[(14)] the name and address of an agent for notices, if any; **and**[.]

(16) whether the property is a special inventory, as defined by the Tax Code, §23.12A.

(c) The entry for each real property parcel that is appraised as part of a residential real property inventory shall indicate that the property is appraised as inventory and identify the inventory of which it is a part.

(d) Any item required by these sections may be maintained in electronic data processing records rather than in physical documents. However, a physical document for the appraisal roll for the appraisal district or for a taxing unit must be prepared and made readily available to the public, as required by the [Texas Property] Tax Code, §1.10.

(e) An appraisal district may maintain its appraisal records in any form that substantially complies with the provisions of this section.

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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Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 21, 1994

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

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Subchapter H. Tax Record Requirements

• 34 TAC §9.3044

The Comptroller of Public Accounts proposes an amendment to §9.3044, concerning the designation of an agent for property tax matters. The amendments are necessary because House Bill 2716, 73rd Legislature, 1993, requires that language advising a taxpayer to contact the appraisal district for free information or forms be added to a comptroller form for the appointment of an agent for a single family residence. The amend-

ments adopt a model application form for designation of an agent for a single family residence.

Mike Reissig, chief revenue estimator, 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. Reissig 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 in providing new information regarding tax responsibilities. 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 Barbara Truesdale, Manager, Property Tax Division, 4301 Westbank Drive, Building B, Suite 150, Austin, Texas 78746-6565.

The amendment is proposed under the Tax Code, §1.111, which requires the comptroller to adopt forms and rules to facilitate compliance with the law. The section implements the Tax Code, §1.111.

§9.3044. Appointment of Agents for Property Taxes.

(a) **Except as provided by subsection (o) of this section, a [A] property owner shall use comptroller** [State Property Tax Board] Model Form 1. 111 to designate an agent for property tax matters. For the purposes of this section, the term "property owner" includes a person who claims a legal interest in the property.

(b) All appraisal districts shall prepare and make available copies of **comptroller** [State Property Tax Board] Model Form 1.111 for taxpayers to use in designating agents for property tax matters.

(c) The appointment of an agent under subsection (a) of this section is not binding on an appraisal district until the designation form is filed with the district. The property owner shall indicate the date the owner appoints the agent on the designation form. If the property owner files forms designating more than one agent to act in the same capacity for the same item of property, the form bearing the later date of appointment revokes the form bearing the earlier date, as of the date the form bearing the later date is filed.

(d) Designation of an agent to receive notices or other communications is not effective for any notice or other communication about a property that is mailed before the property owner or agent files written notice that the designation applies to that property.

(e) While the appraisal office may act on the basis of information provided from a variety of sources, including persons who verbally represent that they act on behalf of property owners, an appraisal district or **appraisal review board** [ARB] should require that the form required by this section be filed with the appraisal district before taking any action that increases the property owner's tax liability on the basis of information provided by a person who claims to represent the property owner.

(f) For the purposes of the prohibition against designating more than one agent for a single item of property in the Tax Code, §1.111(d), an item of property means the property included under a single appraisal district account number. Unless the appraisal district has separately listed an improvement or the property owner presents documentation to the appraisal district showing separate ownership of land and improvements, a property owner may not designate separate agents to represent land and improvements. A property owner may, however, designate different agents to represent him in different capacities on a single item of property or on different aspects of a particular case.

(g) An appraisal district may not require a property owner to file the form required by subsection (a) of this section if the owner designated an agent in writing and filed the document with the appraisal district before the effective date of this section unless the document does not contain the following information:

(1) the name and address of the agent;

(2) the name and address of the owner;

(3) a statement of the purposes for which the agent is designated;

(4) the signature of the property owner or of a person authorized under the Tax Code, §1.111, to sign agent authorizations; or

(5) a description of the property for which the owner originally authorized the agent's representation.

(h) If the appraisal district requires a new designation under subsection (g) of this section, the appraisal district shall deliver a written notice that a new designation is required, stating the reasons for the requirement, to the property owner and the designated agent.

(i) If a property owner directs delivery of tax bills or notices to an agent after the date appraisal records are certified, the chief appraiser, as soon as practicable after the designation is filed, shall notify the affected taxing unit of the property owner's name, the account number of the property, and the name and address of the agent designated for notice.

(j) A property owner is not required to file a written designation of agent for a person who:

(1) acts as a courier for the property owner;

(2) prepares documents in a clerical capacity for the property owner;

(3) is an employee of the owner or of a corporate parent, affiliate, or subsidiary of the owner and is authorized by the owner to represent him;

(4) is an attorney licensed to practice law in the State of Texas and retained by a property owner to represent him before the appraisal district or appraisal review board; or

(5) is a mortgage lender who is authorized by a deed of trust executed by the property owner to pay taxes on the property, provided that the agency is only for the purpose of receiving tax bills from collection offices.

(k) A person who owns property in more than one county may file a reproduction of the original signed appointment form with each appraisal district. If the chief appraiser has reason to question the authenticity of the document the chief appraiser may require the property owner or the agent to provide the original for inspection.

(l) In this section, the term "agent" means a person authorized to perform one or more of the following activities on behalf of the property owner:

(1) receive confidential information available to the person designating the agent, subject to the provisions of subsection (m) of this section;

(2) negotiate or resolve any disputed tax matters;

(3) receive notices, tax statements, appraisal review board orders, and other communications from appraisal districts, appraisal review boards, and tax offices;

(4) file notices of protest;

(5) present protests before the appraisal review board; or

(6) other action required or permitted of a property owner before the appraisal district, appraisal review board, or tax office.

(m) An agent designated by a property owner or person who claims an interest in a property may not have access to renditions, agricultural use (1)-(d) applications, or confidential sales information filed with or provided to the appraisal office by a person who has a competing claim of an interest in the property and has not designated the agent as his representative.

(n) An agent designated to represent a property owner as required by this section, including subsection (g) of this sec-

tion, shall use Model Form 1.111-S to provide the appraisal district with information concerning changes, additions, or deletions in the properties for which the agent is authorized to represent the owner.

(o) **A property owner shall use Model Form 1.111-R to designate an agent for property tax matters related to the owner's single-family residence. All appraisal districts shall prepare and make available to the public copies of comptroller Model Form 1.111-R.**

(p)[(o)] Model Form 1.111, as amended December 13, 1989, **Model Form 1.111-R** and Model Form 1.111-S are adopted by reference. Copies of the form may be obtained from the **Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528** [State Property Tax Board, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565].

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

Issued in Austin, Texas, on December 13, 1993.

TRD-9333649 Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: January 21, 1994

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

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Part IV. Employees Retirement System of Texas

Chapter 81. Insurance

• 34 TAC §§81.1, 81.3, 81.5, 81.7

The Employees Retirement System of Texas (ERS) proposes amendments to §§81.1, 81.3, 81.5, and 81.7, concerning definitions, administration, eligibility, and enrollment and participation. The proposed changes update the rules to reflect the program conversion from a carrier insured health plan to a plan of health coverage fully self-insured by the ERS. The proposed changes also clarify when health and other insurance coverages begin for eligible newborn children, newborn grandchildren, and other added dependents. Finally, the proposed changes contain several technical corrections to the rules.

William S. Nail, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Nail also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved explanation of the terms of coverage regarding ERS members and their dependents, particularly with regard to newborn children, newborn grandchildren, and other dependents added to coverage under the insurance program. 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 William S. Nail, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207.

These amendments are proposed under the Insurance Code, Article 3.50-2, §4, which provides the Board of Trustees of the ERS with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of the Texas Employees Group Insurance Benefits Act.

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

AD&D-Accidental death and dismemberment.

Board or trustee-The board of trustees of the Employees Retirement System of Texas.

Committee or **GBAC** [GIAC]-The Group **Benefits** [Insurance] Advisory Committee as established by the Act, §18.

Evidence of insurability-Such evidence[, including medical reports and a physical examination, as may be] required by a qualified carrier **for approval of coverage** or changes in coverage [or new coverage] pursuant to the rules of §81.7(f) of this title (relating to Enrollment and Participation).

HMO-A health maintenance organization approved by the board [of trustees] to provide health care benefits to **eligible** participants in the program in lieu of participation in the program's **self-insured** [insured] health **plan** [benefits].

Program-The **Texas** Employees Uniform Group Insurance Program as established by the board.

Self-insured health [Insured] plan-That plan of **health** coverage **fully self-insured by the Employees Retirement System of Texas** and administered [and/or underwritten] by a qualified carrier (other than an HMO) [as defined in the Insurance Code, Article 3.05-2, §3(a)(9)].

ORP-The Optional Retirement Program as provided in **the Government Code, Chapter 830** [Texas Civil Statutes, Title 110B, Chapter 36].

Preexisting [Pre-existing] condition-**Any** [From September 1, 1985-August 31, 1988, any physical or mental condition for which an individual was seen or treated by a practitioner during the 90-day period immediately preceding the effective date of the participant's coverage, but does not include medical conditions resulting from congenital or birth defects; provided, however, if the evidence of insurability requirements set forth in §81.7(f) of this title (relating to Enrollment and Participation) must first be satisfied, the 90-day period for purposes of determining excluded conditions will be the 90-day period immediately preceding the date of the employee's completed application for coverage. On or after September 1, 1988, pre-existing condition means any] physical or mental condition, including pregnancy, for which the participant received medical advice or was treated by a practitioner during the six-month period immediately preceding the effective date of the participant's coverage, **excluding** [but shall not include] treatment of a medical condition resulting from congenital or birth defects. **However**[; provided, however,] if the evidence of insurability requirements set forth in §81.7(f) must first be satisfied, the six-month period for purposes of determining **the preexisting conditions exclusion** [excluded conditions] will be the six-month period immediately preceding the date of the employee's completed application for coverage.

Program-The **Texas** Employees Uniform Group Insurance Program as established by the board.

TRS-The Teacher Retirement System of Texas.

§81.3. Administration.

(a) (No change.)

(b) Petitions for supplemental coverage.

(1) An agency head or a group of employees or retirees may submit a written petition to the board or to the **GBAC** [Group Insurance Advisory Committee] requesting the establishment of a supplemental insurance benefits plan.

(2) (No change.)

(3) The proposed plan must meet the requirements of the Act, including the following:

(A) the plan must be reviewed by the **GBAC** [Group Insurance Advisory Committee];

(B)-(E) (No change.)

(4) (No change.)

(c) Health maintenance organizations.

(1) (No change.)

(2) An HMO seeking board approval must satisfy the following conditions.

(A)-(D) (No change.)

(E) The HMO must submit an annual application, with rates, by February 1 of each year to the board [of trustees] in the format prescribed by the system [Employees Retirement System]. Once submitted, the rates may not be modified **without the approval of the board** [effective November 1 of the contract year if the board of trustees approves the modification and the HMO gives notice of modification as required by the letter of agreement between the Employees Retirement System and the HMO under which the HMO is currently operating]. A request for expansion of a **non-contiguous** service area, as described in this section, shall require a separate application.

(F) (No change.)

(G) The board **may adopt** [of trustees hereby adopts] standardized HMO benefits. [The benefits are prescribed in the document entitled "Summary of HMO Benefits" (September 1, 1989-August 31, 1990) , which is adopted by reference in this section. The benefits for fiscal year 1991 are prescribed in the document entitled "Summary of HMO Benefits" (September 1, 1990-August 31, 1991) which is adopted by reference in this section. This document, which is to be considered a part of this section for all purposes, may be obtained from the Executive Director, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.]

(3)-(5) (No change.)

(d) (No change.)

§81.5. Eligibility.

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

(d) Dependents of employees and retirees. The dependents of an employee or retiree are eligible for coverage on the same day that the employee or retiree becomes eligible. A newly acquired dependent is eligible for coverage on the date the **individual** [he or she] becomes a dependent of a covered employee or retiree. The employee or retiree must be enrolled for a particular coverage before **the employee's or retiree's** [his or her] dependents are eligible for that type of coverage. **A newborn natural child or eligible newborn grandchild** is [Newborn dependents are] covered automatically on date of birth. A retiree's dependents are eligible for dependent life insurance coverage only if that coverage was in effect the day before the retiree became eligible for retiree life insurance; however, where the retiree was precluded from adding dependent life coverage because eligible dependents were either active [state] employees or covered as dependents of an active [state] employee, the retiree may add dependent life coverage upon an eligible dependent's termination of [state] employment other than by retirement. The request to add this coverage must be submitted within 30 days following the date the dependent terminates [state] employment other than by retirement. A dependent may not be simultaneously covered for basic term life and dependent term life. A family member who is covered as an employee or retiree is not eligible to be covered as a dependent in the program. A dependent may not be covered by more than one employee or retiree **for the same coverage.** Double coverage is not permitted for any participant in the **program** [Uniform Group Insurance Program].

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

(g) Disability retirement. An applicant who is approved for disability retirement is entitled to retiree insurance coverages as provided in §81.7(c) of this title (relating to Enrollment and Participation). An ORP participant granted ORP disabled retiree status in the program, as established by the disability test used by the system, is eligible to remain in the program for the amount of time the person would be eligible for benefits had retirement coverages been under the Teacher Retirement System of Texas. Initial or continued eligibility for insurance coverage for an ORP disabled retiree will be determined by the system under the following provisions.

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

(3) The effective date of coverage for an ORP disabled retiree in the program is the **first of the month following the date** [end of the month in which] the application for ORP disabled retiree status in the program is received by the system, or the **first of the month following the date** [end of the month in which] employment is terminated, whichever is later.

(h) Former members of the legislature. Upon separation from the legislature, former members of the legislature are eligible to continue the coverage held in the program if they held office on or after May 17, 1979 and they have established sufficient creditable service based on service in the Texas Legislature to be eligible for service retirement [at age 60]. Former members of the legislature are not eligible for disability insurance coverages. Except as provided in this section, former members of the legislature will be subject to the same eligibility rules and effective dates that apply to active members of the legislature.

(i) Former employees of the legislature. Upon separation from the legislature, a former employee of the legislature is eligible to continue coverages held in the program immediately prior to separation under the provisions of the Act, §13(d), if the individual was an employee of the legislature on or after August 29, 1983, as an employee of a member of either house, a member of the staff of either house, an employee of a committee of either house, or an employee of a joint committee and the individual has established sufficient creditable service in the **system** [Employees Retirement System of Texas], based on service as an employee of the Texas Legislature, to be eligible for service retirement [at age 60]. A former legislative employee is eligible to continue the amount of term life insurance in force at the time of termination of legislative employment. A former legislative employee is not eligible for disability insurance coverage. Employment with ancillary agencies such as the Legislative Budget Board, Legislative Council, Legislative Reference Library, or State Auditor's Office does not meet the requirement for employment in this section. Except as provided in this section, a former legislative employee will be subject to the same eligibility rules and effective dates that apply to an active employee of the State of Texas.

(j) Continuation of health and dental coverages only for certain spouses and dependent children of employees/retirees, and for certain terminating employees, their spouses, and dependent children (as provided by the **Consolidated Omnibus Budget Reconciliation Act, Public Law 99-272** [Public Health Service Act, Title XXII]).

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

(3) An employee, spouse, or dependent child determined by the Social Security Administration to have been disabled on the date the employee's employment terminated may have [his or her] continuation health and dental coverages extended **up to** [for] an additional 11 months, for a total of 29 months. Notification of the Social Security Administration's determination must be received by the **system** [Employees Retirement System of Texas within 60 days of the date of that determination, and] before the end of the original 18 months of continuation coverage. Continuation coverage will be canceled the month that begins more than 30 days after the date the Social Security Administration determines that the participant is no longer disabled.

(4)-(9) (No change.)

§81.7. Enrollment and Participation.

(a) Full-time employees and their dependents.

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

(4) A newborn **natural child or eligible newborn grandchild** [dependent] will be covered immediately and automatically from the date of birth in the health

[benefits] plan in effect for the **employee** or **retiree** [employee's or retiree's other dependents].

(A) If there are no other dependents covered at the time of birth, the newborn **natural child or eligible newborn grandchild** [dependent] will be automatically covered in the same health [benefits] plan in which the employee or retiree is then covered. To continue [a newborn dependent's] coverage for more than 30 days after the date of birth, an application for health [benefits] coverage must be submitted within 30 days after the date of birth [if there were no other dependent children covered at the time].

(B) If **health coverage** [there was health benefits coverage in effect] for dependent children **was already in effect**, an application to add a subsequent newborn **natural child or eligible newborn grandchild** [dependents] must be **completed** [submitted] before verification of coverage for the newborn dependent will be provided to the **health** carrier.

(5) The effective date of a newborn **natural child's or eligible newborn grandchild's** [dependent's] life **and AD&D** insurance will be the 14th day after the date of birth, unless the newborn **natural child or eligible newborn grandchild** [dependent] is then confined to a hospital or other institution for medical care; in which case, the **newborn natural child or eligible newborn grandchild's** [dependent's] life **and AD&D** insurance coverage will become effective on the day after the day the newborn **natural child or eligible newborn grandchild** [dependent] is released from the hospital or institution. **The effective date of all other eligible dependents' life and AD&D insurance coverages will become effective as stated in paragraph (3) of this subsection, unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, the life and AD&D insurance coverage will become effective on the day after the day the dependent is released from the hospital or institution.**

(6) The effective date **of self-insured health plan coverage for an employee's or retiree's dependent, other than a newborn natural child or eligible newborn grandchild,** [for an employee's dependent's coverages] will be as stated in **paragraph (3) of this subsection** [previously], unless the dependent is confined in a hospital or other institution for medical care at the date of eligibility; in which case, the **self-insured health plan** coverage will be effective on the day after the day the dependent is released from the hospital or institution.

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

(e) Special rules for additional or alternative coverages.

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

(4) An employee, retiree, or other eligible participant in the Uniform Group Insurance Program enrolled in an HMO, whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) (No change.)

(B) enroll in the **self-insured** [insured] health plan without evidence of insurability by completing an application during the annual limited enrollment period, if the participant is eligible to enroll in another approved HMO. The **preexisting** [pre-existing] conditions exclusion will apply, as defined in subsection (g) of this section. The effective date of the change in coverage for the employee/retiree shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. The pre-existing conditions exclusion will apply as defined in subsection (g) of this section. The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the employing agency;

(C) enroll in the **self-insured** [insured] health plan without evidence of insurability by completing an application during the annual limited enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. The **preexisting** [pre-existing] conditions exclusion will not apply except that, if the participant's or dependent's enrollment in the **self-insured** [insured] health plan occurs within 12 months of the initial date of coverage under the current term of employment or retirement, the exclusion will apply for the remainder of such 12-month period. The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subparagraphs (A)-(C) of this paragraph, **the participant** [he or she] will automatically be enrolled in the **basic plan** [insured health plan with basic health coverage]. Evidence of insurability and **preexisting** [pre-existing] conditions exclusion for the participant and the participant's dependents will apply as referenced in subparagraph (B) of this paragraph.

(5) An employee, retiree, or other eligible **program** [Uniform Group Insurance Program] participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the letter of agreement will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the **board** [trustee];

(B) enroll in the **self-insured** [insured] health plan without evidence of insurability if the participant is not eligible to enroll in another approved HMO. Application of the **preexisting** [pre-existing] conditions exclusion and the effective date of the change in coverage will be determined by the **board** [trustee]; or

(C) if a participant is eligible to enroll in another HMO, the **board** [trustee] may allow the participant to enroll in the **self-insured** [insured] health plan without evidence of insurability and the **preexisting** [pre-existing] conditions exclusion. The effective date of the change in coverage will be determined by the **board** [trustee].

(f) Changes in coverages beyond the first 31 days of eligibility.

(1) An employee or retiree who wishes to add or increase coverage, add eligible dependents to the **self-insured health** [basic] plan, or change coverage from an HMO to the **self-insured health** [basic] plan more than 30 days after the initial date of eligibility must make application for approval by providing evidence of insurability acceptable to the **system** [Employees Retirement System of Texas]. Unless not in compliance with Chapter 85 of this title (relating to Flexible Benefits), coverage will become effective on the first day of the month following the date approval is received by the employee's agency benefits coordinator or by the **system** [Employees Retirement System], if the applicant is a retiree or an individual in a direct pay status. If the applicant is an employee in a leave without pay status, it will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void; and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(2) The evidence of insurability provision applies only to those employees, retirees, or eligible dependents who:

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

(C) enrolled in any coverage under the basic plan and later dropped or were canceled from such coverage, except as provided in subsection (h)(2) and (3) of this section.

(3) An employee or retiree who wishes to add eligible dependents to the **employee's or retiree's** [his or her] HMO coverage may do so during the annual enrollment period, when a spouse **terminates** [loses] employment, [and/or] **when a dependent loses** health coverage for reasons other than voluntary cancellation, when a dependent moves into the service area of the employee's or retiree's HMO, and as provided in paragraph (10) of this subsection, unless not in compliance with Chapter 85 of this title.

(4) An employee or retiree, who moves [his or her] place of residence into an HMO service area, is eligible to apply for coverage on or within the first 30 days after the date of residence in the HMO service area. Coverage will become effective on the first of the month following the date of application[; however, applications completed by the employee or the retiree and postmarked or received by the employing agency (Employees Retirement System for retirees) on the first day of the month will become effective on the first day of the month] .

(5) An employee, retiree, COBRA continuant, surviving spouse, TRS annuitant, ORP annuitant, elected state official, former member or employee of the legislature, or judge, who is enrolled in an approved HMO and permanently moves [his or her] place of residence out of that HMO's service area to a location where **the participant's** [he or she] is no longer eligible to be enrolled in any approved HMO, will be allowed to enroll in the **self-insured** health [insurance] plan and other optional coverages held immediately prior to the date of change in residence. Coverage in the HMO will be canceled on the last day of the month in which the previously described participant moved from the service area, and the coverages in the **self-insured** [insured] health [benefits] plan will become effective on the day following the day HMO coverage is canceled. The evidence of insurability rule shall not apply in these cases. The **preexisting** [pre-existing] **conditions exclusion** [condition limitation] shall apply if the return to the **self-insured** health [insurance] plan occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

(6) When a covered dependent of an employee/retiree permanently moves out of the employee/retiree's HMO service area, the employee/retiree must make one of the following elections, to become effective on the first day of the month following the date the dependent moved out of the employee/retiree's HMO service area:

(A) (No change.)

(B) change coverage to an HMO for which the employee/retiree and covered dependent are eligible. If there is no HMO for which all are eligible, then the employee/retiree and covered dependent may enroll in the **self-insured health** [insured] plan. The evidence of insurability rule shall not apply. The **preexisting** [pre-existing] conditions **exclusion** [limitation] shall apply if the return to the **self-insured health** [insured] plan occurs within 12 months of the initial date of coverage under the current term of employment, as defined in subsection (g)(3) of this section.

(7) Persons wishing to change from one HMO to another HMO in the same service area or change from the **self-insured health** [insured] plan to an HMO will be allowed an annual opportunity to do so. Such opportunity will be scheduled prior to September 1 of each year at times announced by the **system** [Employees Retirement System]. The **preexisting** [pre-existing] conditions **exclusion** [clause] and evidence of insurability provision will not apply in these cases. Coverages in the new HMO will be effective September 1. Persons in a declined or canceled status may apply for coverages in an HMO for which they are eligible during the annual limited enrollment period. Coverage in the HMO will be effective September 1. An employee who re-enrolled after the close of the annual opportunity but prior to September 1 of the same calendar year shall have until August 31 of that calendar year to make changes as allowed above to be effective September 1.

(8) Participants who are **enrolled in the self-insured health plan and** do not reside in any HMO service area will be provided an annual opportunity to enroll eligible dependents in dependent **health coverage** [coverages] without evidence of insurability. Such opportunity will be scheduled **during the annual enrollment period** [at times to be announced by the Employees Retirement System. Coverages applied for during this period will be effective on a date determined by the trustees]. **Coverage will be effective September 1.**

(9)-(11) (No change.)

(g) **Preexisting conditions exclusion** [Pre-existing condition limitation]. [For initial health insurance coverage on or after September 1, 1985-August 31, 1988 or health insurance coverage changes effective on or after September 1, 1985-August 31, 1988, the] **The preexisting conditions** [pre-existing condition] exclusion shall apply to employees, retirees, and eligible dependents who are enrolled in the **self-insured** [insured] health [benefits] plan. The exclusion **for** [limits] benefit payments **shall apply** [to $500] for a full 12 months from the effective date of coverage for a **preexisting** [pre-existing] condition, as defined in §81.1 of this title (relating to Definitions). [For initial health insurance coverage on or after September 1, 1988, or health insurance coverage changes effective on or after September 1, 1988, the pre-existing condition exclusion shall apply to employees, retirees, and eligible dependents who are enrolled in the insured health benefits plan. The exclusion limits benefit payments to $0 for a full 12 months from the effective date of coverage for a pre-existing condition, as defined in §81.1.] The **preexisting conditions** [pre-existing condition] exclusion will not apply to:

(1) an eligible newborn **natural child or eligible newborn grandchild;**

(2) (No change.)

(3) an individual allowed to return to the **self-insured** [insured] health plan because **the individual** [he or she] moves permanently out of an HMO service area except that, if the return to the **self-insured health** [insured] plan occurs within 12 months of the initial date of coverage under the current term of employment, the exclusion will apply for the remainder of the 12-month period for any condition for which the participant received medical advice or was treated by a physician during the **six-month** [six month] period immediately prior to the initial date of coverage under the current term of employment;

(4) (No change.)

(5) an individual (including previously covered dependents) transferring employment with no break in service from **the University of Texas System or the Texas A&M University System** [a state institution of higher education (excluding public community/junior colleges)] to a [state agency or] department **in the program** [on or after September 1, 1989].

(6) (No change.)

(h) (No change.)

(i) Continuing coverage in special circumstances.

(1) **Continuation of health, dental, and optional coverages for terminating employees.** A terminating employee is eligible to continue **all coverages** [coverage] through the last day of the month in which employment is terminated.

(2) **Continuation of health, dental, and life coverages for employees in a leave without pay status.** An employee in a leave without pay status may continue the types and amounts of health, life, and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. During this period, the employee, other than an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 (P.L. 103-3), may not change coverage except that, employees in a leave without pay status may: add new dependents, including newborns; reduce or cancel coverage; and make such coverage changes as are permitted during the annual [limited] enrollment period as described in subsection (f)(7) of this section. Disability income coverage for an employee in a leave without pay status[, other than an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 (P.L. 103-3),] will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the agency as approved leave without pay. The coverages of an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 may continue at the same level of benefits and contributions that would have been in place if the employee had not taken the leave.

(3) **Continuation of health, dental, and life coverages for a former member or employee of the legislature.** A former member or employee of the legislature, who is eligible to continue to participate in the program, must notify the **system** [Employees Retirement System] within 30 days after leaving office or employment of the **employee's** [his or her] intent to continue the coverage in effect. Coverage will be canceled if a premium is not received within 30 days of the due date. A former member or employee of the legislature is not eligible to continue disability insurance coverage.

(4) Continuation of health, **dental, and life coverages** [coverage benefits] for a former **judge** [judges]. A former State of Texas judge, who is eligible for judicial assignments and who does not serve on judicial assignments during a period of one calendar month or longer, may continue the types and amounts of [health and life] coverages, **other than disability income,** that were in effect during the calendar month immediately prior to the month in which **the former judge** [he or she] did not serve on judicial assignments. These coverages may continue for no more than 12 continuous months during which the former judge does not serve on judicial assignments as long as, during the period, the former judge [he or she] continues to be eligible for assignment. Disability income coverage during the period will be canceled on the first day of the month during which the former judge does not serve on a judicial assignment. To reinstate canceled disability income coverage once service on judicial assignments is resumed, a former judge must submit evidence of insurability acceptable to the **system** [insurance carrier]. If approved, disability income coverage will become effective on the first day of the month following the date approval is received by the **employing department** [Employees Retirement System].

(5)-(11) (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 15, 1993.

TRD-9333688

Charles D. Travis
Executive Director
Employees Retirement System of Texas

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 867-3336

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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 filling 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 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 43. Tuberculosis

A Cattle

• 4 TAC §43.2

The Texas Animal Health Commission has withdrawn from consideration for permanent adoption a proposed amendment to §43.2, which appeared in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7075). The effective date of this withdrawal is December 13, 1993.

Issued in Austin, Texas, on December 13, 1993.

TRD-9333601 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: December 13, 1993

For further information, please call: (512) 479-6697

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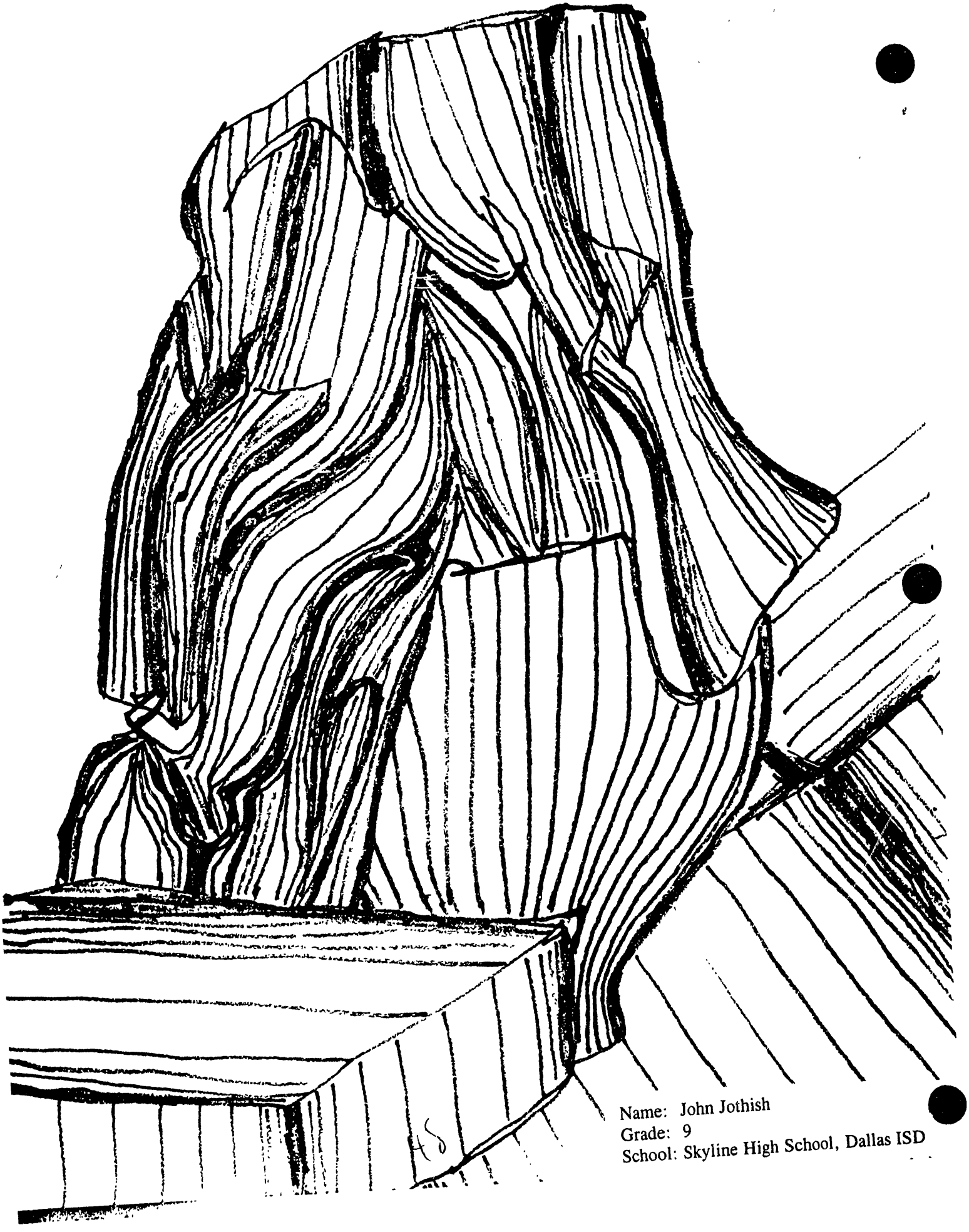

Name: John Jothish
Grade: 9
School: Skyline High School, Dallas ISD

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 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 55. Swine

• 4 TAC §55.6

The Texas Animal Health Commission adopts an amendment to §55.6, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7076).

It was necessary to amend the regulations to waive the pseudorabies retest requirements for swine that enter from the premise of origin in a Stage V state or a qualified herd in a Stage V state. In addition breeding swine would have to have been tested negative within 30 days prior to entry to be exempt from post entry testing.

Breeding swine not known to be infected with or exposed to pseudorabies which enter Texas from a qualified herd in a Stage IV state or the premise of origin in a Stage V state and were tested negative within 30 days prior to entry are not required to be retested. Feeder swine entering for feeding for show will not have to be tested for pseudorabies after entry if they are moved directly from a herd of origin in a Stage V state or from a qualified herd in a Stage IV state.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §161.041, which authorizes the commission to adopt rules regarding testing of Livestock; §161.081, which authorizes the commission to regulate the movement of livestock into the state; and §165.022, which authorizes the commission to adopt rules for eradication of swine diseases.

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-9333606 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: January 5, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 479-6697

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TITLE 10. COMMUNITY DEVELOPMENT

Part VII. Council on Workforce and Economic Competitiveness

Chapter 252. Local Workforce Development Boards

• 10 TAC §252.1

The Council on Workforce and Economic Competitiveness adopts new §252.1, with changes to the proposed text as published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7509).

The Workforce and Economic Competitiveness Act, Chapter 668, Acts of the 73rd Legislature, 1993, requires the Council to issue rules for the formation of local workforce development boards to plan, oversee, and evaluate the delivery of all workforce training and services programs in the local workforce development areas.

The Workforce and Economic Competitiveness Act, Chapter 668, Acts of the 73rd Legislature, 1993, provides that the Council on Workforce and Economic Competitiveness will oversee the process for the formation of local workforce development areas. The Council may grant waivers for the formation of the local areas prior to January 1, 1993. This rule provides guidance for the formation and criteria for the early certification of the local workforce development boards. The chief elected officials in each designated local workforce development area must submit an application and provide the information required to receive a waiver from the Council. The waiver will allow them to submit the application to establish the local board to the Governor prior to January 1, 1995.

Public hearings on the proposal were held in Arlington, Austin, Houston, Laredo, and Lubbock. Comments on the proposed rule were also received in writing. Comments included the following: The Council should grant waivers of the independent staffing requirement for local workforce development boards and the requirement of independent provision of services during the period prior to January 1, 1993. Persons commenting felt the refusal to grant waivers during this period was contrary to the intent of the legislation. Rural areas, in particular, have difficulty with these requirements. One comment stated that the general tone of the rule should be modified to encourage the early formation of local workforce development boards rather than erect barriers against their creation. Another comment was that the definition of chief elected official should be enlarged to include the mayors of each county seat. Municipal governments should be considered to be at least as significant as the counties in terms of local resource base and the most sophisticated available institutional apparatus. Others commented in favor of the requirement of unanimous agreement among the chief elected officials to form a local workforce development board.

Middle Rio Grande Development Council, Austin/Travis County PIC, Heart of Texas Council of Governments, Central Texas Council of Governments, West Central Texas Council of Governments, South Plains College, Permian Basin Regional Planning Commission, Concho Valley Council of Governments, South Plains Quality Workforce Committee, Lubbock/Garza County PIC, and South Plains Rural PIC made comments concerning the proposed new section.

The Council generally agreed with the comments and the section was changed accordingly. The designation of chief elected officials was changed to include mayors of cities with a population of 100,000 or more rather than 200,000. This did not add as many cities as the comment to add all county seats, but did increase the representation of mayors as chief elected officials. With respect to the comments on the granting of waivers of the requirements for independent staffing of the local workforce development boards and independent provision of training services, the Council determined that waivers would be allowed.

The new section is proposed under the Workforce and Economic Competitiveness Act, Chapter 668, Acts of the 73rd Legislature, 1993, which requires the Council on Workforce and Economic Competitiveness to issue rules for the formation of local workforce development boards.

§252.1. Requirements for Formation of Local Workforce Development Boards prior to January 1, 1995.

(a) Purpose for Waivers.

(1) Upon application by the chief elected officials and approval of the Council on Workforce and Economic Competitiveness, a waiver may be granted by the Council to allow an application to form a local workforce development board to be submitted to the Governor prior to January 1, 1995.

(2) Before a waiver may be granted, all requirements of this section must be met.

(3)em>It is not the intention of the Council to grant all requests for waivers, even if the basic requirements of this section are met. Waivers are discretionary and not a matter of right. It is the intention of the Council to grant a limited number of waivers to allow boards to be formed to serve as pilot projects to aid in the formation of boards throughout the state beginning January 1, 1995.

(b) State and Federal Law. The formation of local workforce development boards is governed by the following federal statutes and regulations and state statutes:

(1) The Job Training Partnership Act, as amended, 29 U.S.C., §1501, et seq.;

(2) 20 C.F.R. , Part 628; and

(3) The Workforce and Economic Competitiveness Act, Chapter 668, Acts of the 73rd Legislature, Regular Session, 1993.

(c) Chief Elected Officials. The following officials are designated as the chief elected officials for the purposes of establishing agreements to form local workforce development boards:

(1) The mayor of each city with a population of 100,000 or more according to the last federal census in a workforce development area; and

(2) The county judge of each county included in a workforce development area as designated by the Governor.

(3) The chief elected officials may, and are encouraged to, consult with local officials other than those listed in subparagraphs (1) and (2) of this subsection.

(d) Time of Application.

(1) Chief elected officials may not request a waiver to establish a local board until the Governor has designated local workforce development areas as provided in the Workforce and Economic Competitiveness Act, Chapter 668, Acts of the 73rd Legislature, 1993.

(2) Except as provided in this section, the chief elected officials of a local workforce area may not apply for approval of the formation of a local workforce development board, and no local workforce development board shall be approved, prior to January 1, 1995.

(e) criteria for waiver:

(1) All requirements of this section must be met;

(2) An applicant must establish how the grant of a waiver would contribute to the improvement of the overall development of the local workforce development system; and

(3) An applicant must demonstrate commitment to the formation of the local workforce development board, through such things as commitment of resources, staff, materials, funds, joint use of facilities and staff, and other similar proposals.

(f) Procedure for Formation of a Local Workforce Development Board prior to January 1, 1995. The following procedures must be followed to apply for a waiver for the formation of a local workforce development board:

(1) Pre-application procedure. If a majority of the chief elected officials agree to initiate procedures to review the possibility of establishing a local workforce development board, a letter should be sent to the Executive Director of the Council requesting pre-application status. The Council staff will be available to work with local officials during the development of the application to make the process as uncomplicated as possible. During the pre-application process and prior to applying to the Council for a waiver, the chief elected officials must perform the following acts:

(A) The chief elected officials must conduct a process to consider the views of all affected local organizations, including private industry councils, quality workforce planning committees, and other affected organizations before making a final decision to apply for a waiver for the early formation of a local workforce development board.

(B) Prior to the submission of the application, the chief elected officials must hold a public meeting to discuss and gather information concerning the establishment of a local workforce development board.

(2) Application procedure.

(A) The chief elected officials must submit an application to the Council on Workforce and Economic Competitiveness. The application will be reviewed by the Council staff according to criteria established by the Council in this section and forwarded to the Governor with a recommendation for final action. Each application must include:

(i) an agreement in writing signed by the chief elected officials in the local workforce development area, delineating:

(I) the purpose of the agreement;

(II) the process that will be used to select the chief elected official who will act on behalf of the other chief elected officials and the name of such chief elected official if the person has been selected;

(III) the initial size of the local workforce development board;

(IV) the process to be used to appoint the board members, which must be consistent with applicable federal and state laws; and

(V) the terms of office of the members of the board;

(ii) evidence that the chief elected officials have considered the views of all affected local organizations, including consideration prior to deciding to form a local board;

(iii) evidence that the chief elected officials in the area have agreed to the establishment of a local board;

(iv) evidence that the local board can meet the legislative requirement that they establish workforce development centers within 180 days;

(v) evidence that the board is prepared to develop a single plan for addressing the workforce development needs in their area that is consistent with the State's strategic plan;

(vi) evidence that the board is prepared to assume the functions and responsibilities of local workforce development advisory boards, councils, and committees including private industry councils, quality workforce planning committees, job service employer committees, and local general vocational program advisory committees;

(vii) a plan for independent staffing for the board and methods to be utilized to procure any services that have previously been offered directly (a waiver of this requirement may be granted); and

(viii) a statement concerning how the operation of the board will be financed, including sources of funding, additional costs to be incurred over existing resources, and any savings from current operations.

(B) Evidence for the items in the application may consist of written documents, written agreements, minutes of pubic meetings, copies of correspondence, and such other documentation as may be appropriate.

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-9333617 Tom C. Frost
Presiding Officer
Texas Council on Workforce and Economic Competitiveness

Effective date: January 3, 1994

Proposal publication date: October 29, 1993

For further information, please call: (512) 305-7007

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter B. Operating Certificates, Permits and Licenses

• 16 TAC §5.33

(Editor's note: In the July 20, 1993, issue of the Texas Register (18 TexReg 4726) the Railroad Commission of Texas proposed an amendment to 16 TAC §5.33. The notice of final adoption for that amendment was subsequently published in the September 24, 1993, issue of the Texas Register (18 TexReg 6545), citing an effective date of January 1, 1994.

In a separate rulemaking, the commission published an additional proposed amendment to 16 TAC §5.33 in the October 15, 1993, issue of the Texas Register (18 TexReg 7079), the final adoption of which is published in this issue of the Texas Register, citing an effective date of January 4, 1994.

Because the initial amendment has not yet taken effect, the final adoption published in this issue of the Texas Register does not reflect the rule as it will exist as of January 4, 1994; therefore, in the interest of clarity, the rule is being printed in this note as it will appear in the Texas Administrative Code as of January 4, 1994.

§5.33. Contract Carriers. A contract carrier permit shall not authorize the performance of transportation services for more than 15 shippers, unless it is issued to a truckload contract carrier as that term is defined in §5.46 of this title (relating to Truckload Contract Carriers). A truckload contract carrier permit cannot be limited as to the number of parties or eligible contracts to be served under such permit.)

The Railroad Commission of Texas adopts an amendment to §5.33, without changes to the proposed text as published in the October 15, 1993, of the *Texas Register* (18 TexReg 7079). The amendment is adopted to increase the ability of contract carriers more effectively to serve the shipping public.

The amendment increases the maximum number of shippers a single contract carrier permit holder can serve under its permit from 10 to 15.

On September 24, 1993, the *Texas Register* published for final adoption a different amendment to §5.33, effect January 1, 1994, clarifying that the section does not apply to truckload contract carriers. Effective January 1, 1994, the rule as amended will read as follows:

§5.33. Contract Carriers. A contract carrier permit shall not authorize the performance of transportation services for more than 10 shippers, unless it is issued to a truckload contract carrier as that term is defined in §5.46 of this title (relating to Truckload Contract Carriers). A truckload contract carrier permit cannot be limited as to the number of parties or eligible contracts to be served under such permit.

Two comments were received regarding the proposed rule. One commenter, Texas Association For Competitive Transportation, supports the amendments on the grounds that the amendment decreases unnecessary regulatory burdens consistent with the spirit of Senate Bill 1313 of the 73rd Legislature; the amendment will not blur the distinctions that exist between contract carriers and common carriers; the amendment will in no way compromise the protection of the public, because a proposal to serve additional shippers would have to be supported by a showing of public need; and other states have similar or less stringent limitations on the numbers of shippers that can be served under a contract carrier permit. The other commenters supports the amendment on the grounds that it follows a national trend that is being set by the marketplace, and that the amendment would alleviate the need of carriers who desire to serve more shippers to form a second company and seek another contract carrier permit.

The commission agrees that the amendment is consistent with the spirit of Senate Bill 1313 and that the amendment will not affect the burden of proof placed on applicants for contract carrier authority; they will still be required to prove a need for the proposed service.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which vest the commission with the power and authority to prescribe all rules and regulations necessary for the government of motor carriers, and to supervise and regulate such carriers in all matters affecting the relationship between carriers and the shipping public.

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 13, 1993.

TRD-9333640 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP GAs
Railroad Commission of Texas

Effective date: January 4, 1994

Proposal publication date: October 15, 1993

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

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Subchapter H. Tariffs and Schedules

• 16 TAC §5.137

The Railroad Commission of Texas adopts an amendment to §5.137, concerning when weighing is unnecessary, without changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7906).

The amendment will allow specialized motor carriers to assess freight charges based on the shipper's representation of weight and count when transporting new iron and steel angles, bars, beams, channels, flats, strips, plate, sheets and/or new and unused pipe. These articles are produced and sold in standardized lots, with the selling price determined by calculating the theoretical weight based on pounds per unit of measure. Theoretical weights are available for these articles in industry publications. The amendment will reduce shipping delays, traffic congestion, and costs associated with the location and utilization of scales in major metropolitan areas.

Five public comments were received regarding the proposed rule and they were all favorable. Texas United Pipe, Inc.; J and R Contractor, Inc., joined by Walton Transportation, Inc.; J-M Manufacturing Company, Inc.; and the Texas Motor Transportation Association support adoption of the proposed rule as published. Barbour Trucking Company, Inc., supports adoption of the proposed rule with additional language that would include "machinery, concrete products, and other specialized commodities..." The Commission disagrees that the suggested additional commodities be included because no assurance was provided to show the additional commodities have weights which have been specified as standardized in recognized industry publications.

The amendment is adopted pursuant to Texas Civil Statutes, Article 911b, §4(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

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 13, 1993.

TRD-9333641 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: January 4, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512) 463-7096

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter H. Approval of Off-Campus and Out-of-District Instruction for Public Colleges and Universities

- **19 TAC §5.156**

The Texas Higher Education Coordinating Board adopts repeal of §5.156, concerning Consideration of Courses Offered in Texas by Non-Texas Public Institutions of Higher Education, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6180).

There will be improvement of the Coordinating Board's effectiveness in preventing deception of the public resulting from the conferring and use of fraudulent or substandard college or university degrees.

This section is being repealed and its essential contents are being to transferred to §5.211 and §5.217 in order to implement more effectively the intent of Texas Education Code, Chapter 61, Subchapter H.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §61.403, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Consideration of Courses Offered in Texas by Non-Texas Public Institutions of Higher Education.

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-9333673 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6110

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Subchapter K. Private Degree-Granting Institutions Operating in Texas

- **19 TAC §§5.211, 5.213, 5.217, 5.222**

The Texas Higher Education Coordinating Board adopts amendments to §§5. 211, 5.213, 5.217, and 5.222, concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6181).

Enforcing the proposed rules could improve the Coordinating Board's effectiveness in preventing deception of the public resulting from the conferring and use of fraudulent or substandard college or university degrees as provided in Texas Education Code, Chapter 61, Subchapter G.

The rules were amended to clarify the Coordinating Board's statutory authority over off-campus activities or nonexempt institutions when those activities fall short of the definition of "branch campus" found in §5.211. Section 5.222 was amended editorially to conform more precisely to the Administrative Procedure Act. The changes will be applied in the Coordinating Board's consideration of requests from nonexempt institutions of higher education seeking to operate degree programs or degree-credit courses in Texas as provided in Texas Education Code, Chapter 61, Subchapters G and H.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §61.311, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas.

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-9333674 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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Subchapter O. Offering of Small Classes by Public Senior Colleges and Universities

- **19 TAC §§5.301-5.303**

The Texas Higher Education Coordinating Boards adopts repeal of §§5. 301-5.303, concerning Offering of Small Classes by Public Senior Colleges and Universities (Funding), without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6182).

The rules may encourage universities to offer some classes that would otherwise not be offered.

The rules are being repealed and rewritten to be consistent with legislative intent expressed in Senate Bill 5. Some hours not now eligible for state funding will be eligible for funding in the future.

There were no comments received regarding adoption of the repeals.

The repeals are adopted under the Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Offering of Small Classes by Public Senior Colleges and Universities (Funding).

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-9333677 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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- **19 TAC §5.301, §5.302**

The Texas Higher Education Coordinating Boards adopts new §5.301 and §5.302, concerning Offering of Small Classes by Public Senior Colleges and Universities, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6182).

The rules may encourage universities to offer some classes that would otherwise not be offered.

The rules are being changed to be consistent with legislative intent expressed in Senate Bill 5. Some hours not now eligible for state funding will be eligible for funding in the future.

There were no comments received regarding adoption of the new sections.

The new sections are adopted under the Texas Education Code, §61.027, which pro-

vides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Offering of Small Classes by Public Senior Colleges and Universities.

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-9333676 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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Chapter 9. Public Junior College

Subchapter D. Basic Standards

• 19 TAC §9.63

The Texas Higher Education Coordinating Boards adopts an amendment to §9.63, concerning Basic Standards (Admission), without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6183).

There will be less state control over the admissions of high school students and more local control by the institutions that are attuned to the needs of their local communities.

Colleges are experiencing an increased number of requests for admission from high school students who have not completed the junior year. The current rules stipulate that waivers for this type of high school student must be granted by the Commissioner of Higher Education or his designee. The rule change would delegate the final decision to the local level: the chief academic officer of each college. Increasingly, admissions applications are received by colleges from students who are taught at home. The current rules address prospective student attending public school who have not completed high school or prospective students who have dropped out of the public school system. The rule change was needed to provide procedures for admitting children taught at home. The amendment would relegate the final decision on admissions of each type of high school student described previously to the local level. The effect of the change would be deregulation of the admissions process from the state and increased local control.

There were comments received. Two of the schools expressed the need for stronger language in the rule regarding assessment of the academic ability of the nontraditional high school student, i.e. the academic skill level of the student rather than equivalent grade level. The remaining comments were supportive of the rule.

Alvin Community College; Angelina College; Kilgore College; North Harris College; and TSTC-Amarillo commented on the proposed amendment.

The Community and Technical College division of the Coordinating Board agreed that the suggestions were good comments, and these will be reviewed by the Committee on Lower Division General Academic and Transfer Issues who assisted in the development of the policy.

The amendment is adopted under the Texas Education Code, §130.001, and §61.061, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Basic Standards (Admission).

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-9333675 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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Chapter 21. Student Services

Subchapter B. Determining Residence Status

• 19 TAC §21.32

The Texas Higher Education Coordinating Board adopts an amendment to §21.32, concerning Tuition Reciprocity with Bordering States or Countries, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6184).

Students from bordering states will be encouraged to enroll in technical colleges in Texas, thus enriching the mix of students on campus; Texas students will be allowed (through reciprocity) to attend technical schools in bordering states that those states' resident tuition rates.

This proposed amendment is being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. On a reciprocal basis, students from bordering states will be allowed to enroll in technical colleges located with 100 miles from their state border and pay the resident tuition rate. Such students graduating or completing 45 semester credit hours at a technical college shall be entitled to pay resident rates at a Texas public senior upper level institution located in the same county or an adjacent county to that in which the technical college is located.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §54.060, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status.

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-9333678 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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• 19 TAC §21.39

The Texas Higher Education Coordinating Board adopts an amendment to §21.39, concerning Determining Residence Status (Glossary), without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6185).

Homeless individuals will be identified consistently by all public institutions.

The proposed amendment is being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. The rule will provide institutions a consistent definition for a "homeless individual."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §54.052, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status (Glossary).

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-9333679 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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• 19 TAC §21.40

The Texas Higher Education Coordinating Board adopts new §21.40, concerning Determining Residence Status (Homeless Individual), with changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6185).

Homeless individuals enrolling in vocational education courses at public junior colleges will be able to register by paying the resident rather than nonresident tuition rate. The fiscal note estimated the costs to the state to be $3,000 per year.

This new section is being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. Homeless individuals will be defined consistently by public institutions of higher education, and those enrolled in vocational education courses at a public junior college will be allowed to register by paying the resident rather than nonresident tuition rate.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §54.052, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status (Homeless Individual).

§21.40. Homeless Individual.

(a) A homeless individual who resides in Texas for the 12-month period immediately preceding the date of registration, but who does not have a permanent residence in Texas, may enroll in vocational education courses at a public junior college by paying the residence tuition rate.

(b) For this purpose, a homeless individual is defined by 42 United States Code, §11302, which states, "the term homeless or homeless individual or homeless person" includes:

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is:

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations;

(B) an institution that provides temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(c) Documentation for a homeless individual may consist of written statements from the office of one or more legitimate social service agencies located in Texas, attesting to the provision of services to the homeless individual over the previous 12-month period.

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-9333680 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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Subchapter J. The Physician Education Loan Repayment Program

• 19 TAC §§21.251-21.265

The Texas Higher Education Coordinating Board adopts repeal of §§21. 251-21.265, concerning the Physician Education Loan Repayment Program, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6186).

Physician recipients will benefit from the revised provisions.

The rules are being repealed and rewritten. The changes are required to bring the program into compliance with state law. The revisions will open the program up to more physicians.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Education Code, §61.532 and §61. 537, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Physician Education Loan Repayment Program.

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-9333682 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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• 19 TAC §§21.251-21.266

The Texas Higher Education Coordinating Board adopts new §§21.251-21. 266, concerning the Physician Education Loan Repayment Program. Section 21. 261(b)(2)(c) and §21.263 are adopted with changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6186). Sections 21.251-21.260, 21.262, and 21.264-21.266 are adopted without changes and will not be republished.

The rule will function by allowing physician recipients to benefit from the revised provisions.

The changes are required to bring the program into compliance with state law. The revisions will open the program up to more physicians.

Comments were received concerning parts of the program rules which were not being proposed for change.

Texas Medical Association commented on the proposed new sections.

The new sections are adopted under the Texas Education Code, §61.532 and §61.537, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Physician Education Loan Repayment Program.

§21.261. State-funded Physician Education Loan Repayment Program.

(a) The state-funded Physician Education Loan Repayment Program is limited to repayments on education loans on behalf of physicians who practice in economically depressed or rural medically underserved areas of Texas or for one of the following state agencies or programs:

(1) the Texas Department of Health;

(2) the Texas Department of Mental Health and Mental Retardation;

(3) the Texas Department of Criminal Justice;

(4) the Texas Youth Commission;

(5) a Community Health Center in Texas; and

(6) an approved family practice residency training program in Texas.

(b) The commissioner may authorize repayment of eligible education loans made to an eligible physician who shows evidence of a strong service commitment and who:

(1) has submitted the appropriate application to the board;

(2) has completed at least one year of medical practice:

(A) in an economically depressed or rural medically underserved area of the state; or

(B) for one of the four state agencies named in subsection (a) of this section; or

(C) for an approved family practice residency training program in Texas.

§21.263. Priorities of Application Acceptance. Acceptance of applicants will depend on the availability of funds. Renewal applicants in the state-funded and expanded programs will be given priority treatment over first-time applicants. The Texas Family Practice Residency Advisory Committee shall establish priorities among eligible physicians for first-time repayment assistance by taking into account the degree of physician shortage, geographic location, and other criteria the committee considers appropriate.

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-9333681 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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Subchapter I. Paul Douglas Teacher Scholarship Program

• 19 TAC §§21.301-21.324

The Texas Higher Education Coordinating Board adopts the repeal of §§21. 301-21.324, concerning Paul Douglas Teacher Scholarship Program, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6188).

The needs of the State will be met in addressing teacher shortage areas, including the demand for and supply of early childhood, elementary, and secondary teachers and the demand for teachers with training in specific academic disciplines in the State; the changes will benefit both the student recipients and the State.

This subchapter is being repealed and rewritten. These changes are required to comply with federal regulations mandated by the Higher Education Amendments of 1992. The changes will benefit the applicants for the scholarship by broadening the selection criteria.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Education Code, §52.54, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Paul Douglas Teacher Scholarship Program.

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-9333684 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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• 19 TAC §§21.301-21.325

The Texas Higher Education Coordinating Board adopts new §§21.301-21. 325, concerning Paul Douglas Teacher Scholarship Program. Section 21.323(a)(2) is adopted with changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6189). Sections 21.301-21. 322, 21.324, and 21.325 are adopted without changes and will not be republished.

The needs of the State will be met in addressing teacher shortage areas, including the demand for and supply of early childhood, elementary, and secondary teachers and the demand for teachers with training in specific academic disciplines in the State; the changes will benefit both the student recipients and the State.

These changes are required to comply with federal regulations mandated by the Higher Education Amendments of 1992. The changes will benefit the applicants for the scholarship by broadening the selection criteria.

No comments were received regarding adoption of the new sections.

The new rules are adopted under the Texas Education Code, §52.54, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Paul Douglas Teacher Scholarship Program.

§21.323. Deferments.

(a) To qualify for any deferments, the scholar must notify the board of his or her claim to a deferment and submit written proof acceptable to the board that he or she is:

(1) engaged in a full-time course of study at an institution of higher education;

(2) serving, not in excess of three years, on active duty as a member of Vista, the Peace Corps, or a member of the armed services of the United States;

(3) temporarily totally disabled, for a period not to exceed three years, as established by a sworn affidavit of a qualified physician;

(4) unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

(5) seeking and unable to find full-time employment for a single period not to exceed 12 months;

(6) seeking and unable to find full-time employment as a teacher in a public or private non-profit pre-school, elementary, or secondary school and unable to satisfy the terms of the repayment schedule. This deferment is limited to a single period not to exceed 27 months.

(b) The board shall extend the ten-year loan repayment period by a period equal to the length of any deferment granted by the board. If the scholar proves his or her financial hardship to the board's satisfaction, then the board may extend the ten-year loan repayment period for a period as determined by the board.

(c) During the time a scholar qualifies for any of the deferments in subsection (a) of this section, he or she need not make scholarship payments.

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-9333683 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date. September 14, 1993

For further information, please call: (512) 483-6160

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Subchapter AA. Texas-Mexico Reciprocal Educational Exchange Program

• 19 TAC §§21.901-21.906, 21,909

The Texas Higher Education Coordinating Board adopts amendments to §§21. 901-21.906 and 21.909, concerning Recipro-

cal Education Exchange Program, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6192).

Students from Texas will be encouraged to enrich their learning experiences by studying in Canada; students in Texas will be exposed to more students from Canada, thus expanding their opportunities to learn from them.

The amendments are being made to bring our residence rules into compliance with laws passed in the 1993 legislative session. The existing exchange program for students/faculty/staff from Mexico and their counterparts at Texas public institutions will be expanded to include students, faculty, and staff from Canada.

There were no comments received regarding adoption of the amendments.

The amendments are adopted under Texas Education Code, §54.060, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Reciprocal Educational Exchange Program.

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-9333685 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: January 5, 1994

Proposal publication date: September 14, 1993

For further information, please call: (512) 483-6160

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 281. General Provisions

• 22 TAC §281.48

The Texas State Board of Pharmacy adopts an amendment to §281.48, concerning Informal Disposition of Contested Cases, with one change to the text as proposed in the September 7, 1993, *Texas Register* (18 TexReg 5936). This amendment brings the Texas Pharmacy Rule of Procedure into compliance with the directives included in the new §17D of the Texas Pharmacy Act as added by Senate Bill 621 passed by the 73rd Legislature to be effective September 1, 1993.

The rule outlines procedure for informal conferences including provisions, when applicable and permitted by law, for complainants to have the opportunity to be heard at an informal conference.

One comment was received regarding the citation to the Administrative Procedure Act (APA) in subsection (b). The commenter indicated that during the 73rd Legislative Session APA was codified into the Government Code. The Agency agrees with this comment and has corrected the citation to APA.

The rule is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1,) §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act; Texas Pharmacy Act, §17B(c), which becomes effective September 1, 1993, and requires that the board adopt a form for complaints; and Texas Pharmacy Act, §17D, which became effective September 1, 1993, and requires that the Board adopt rules governing informal disposition of contested cases.

§281.48. Informal Disposition of a Contested Case.

(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, or dismissal.

(b) Prior to the imposition of disciplinary sanction(s) against a license, the licensee shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with the Administrative Procedure and Act, §2001.054(c) (Government Code, Chapter 2001).

(c) Informal conferences shall be attended by the executive director/secretary or designated representative, legal counsel of the agency or an attorney employed by the office of the attorney general, and other representative(s) of the agency as the executive director/secretary and legal counsel may deem necessary for proper conduct of the conference. The licensee and/or the licensee's authorized representative(s) may attend the informal conference and shall be provided an opportunity to be heard.

(d) In any case where charges are based upon information provided by a person (complainant) who filed a complaint with the board, the complainant may attend the informal conference, unless the proceedings are confidential under the Texas Pharmacy Act, §27A or other applicable law. A complainant who chooses to attend an informal conference shall be provided an opportunity to be heard with regard to charges based upon the information provided by the complainant. Nothing herein requires a complainant to attend an informal conference.

(e) Informal conferences shall not be deemed meetings of the board and no formal record of the proceedings at such conferences shall be made or maintained.

(f) Any proposed consent order shall be presented to the board for its review. At the conclusion of its review, the board shall approve or disapprove the proposed consent order. Should the board approve the proposed consent order, the appropriate notation shall be made in minutes of the board and the proposed consent order shall be entered as an official action of the board. Should the board disapprove, the proposed consent order shall be scheduled for public hearing.

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 14, 1993.

TRD-9333659 Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: January 4, 1994

Proposal publication date: September 7, 1993

For further information, please call: (512) 832-0661

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• 22 TAC §281.58

The Texas State Board of Pharmacy adopts an amendment to 281.58, concerning Executive Sessions, without changes to the proposed text as published in the September 17, 1993, *Texas Register* (18 TexReg 6283). The rules amend existing rule language to specify that an attorney employed by the Office of the Attorney General may advise the Board on legal considerations during executive sessions.

No comments were received regarding adoption of the section

The amendment is adopted under the Texas Pharmacy Act, (Texas Civil Statutes, Article 4542a-1,) §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9333657 Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: January 4, 1994

Proposal publication date: September 17, 1993

For further information, please call: (512) 832-0661

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• 22 TAC §281.73

The Texas State Board of Pharmacy adopts new §281.73, concerning Complaints, with changes to the proposed text as published in the September 7, 1993, *Texas Register* (18 TexReg 5936). The section describes the procedures for filing complaints made to the Board.

The new section ensures compliance with provisions described in Senate Bill 621 adopted by the 73rd Legislature. Senate Bill 621 was passed by the 73rd Legislature and adds a new §17B to the Texas Pharmacy Act which becomes effective September 1, 1993. Section 17B provides that "the board by rule shall adopt a form for the filing of complaints made to the board."

No comments were received on the proposed rule. The changes made in the proposed text were recommended by agency staff and were style changes only and not substantive.

The new rule is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1,) §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act and Texas Pharmacy Act; §17B(c), which becomes effective September 1, 1993, and requires that the board adopt a form for complaints.

The following is the article that is affected by this rule: Texas Civil Statutes, Article 4542a-1.

§281.73. Complaints. Complaints may be filed with the agency orally by phone or in person at the agency's office, or in any written form, including submission of a completed complaint form. A complaint form shall be maintained at the agency's office for use at the request of any complainant. The complaint form shall request information necessary for the proper processing of the complaint by the agency, including, but not limited to:

(1) complainant's name, address, and phone number;

(2) name, address and phone number of subject of complaint, if known;

(3) date of incident;

(4) description of drug(s) involved, if any; and

(5) description of incident giving rise to complaint.

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 14, 1993.

TRD-9333658 Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: January 4, 1994

Proposal publication date: September 7, 1993

For further information, please call: (512) 832-0661

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Chapter 283. Licensing and Requirements for Pharmacists

• 22 TAC §283.9, §283.10

The Texas State Board of Pharmacy adopts amendments to §283.9 and §283.10, concerning Fee Requirements for Licensure by Examination and Reciprocity and Requirements for Application for a Pharmacist License Which has Expired, without changes to the proposed text as published in the September 7, 1993, *Texas Register* (18 TexReg 5936). The rule amendments implement provisions of §16(a) and §24(g) of Texas Pharmacy Act as amended by Senate Bill 621 passed by the 73rd Legislature which became effective September 1, 1993. The Act now specifies that a pharmacist may not renew a license that has been expired for one year rather than two years. These amendments outline the procedures a pharmacist must follow to obtain a new license.

No comments were received on the proposed amendments.

The amendments are adopted under the Texas Pharmacy Act, §16(a), which gives the Board the authority to adopt rules for the proper administration of the Act; and §24(g), which specifies that the Board may not renew a license that has been expired one year or more.

The following is the article that is affected by this rule: Texas Civil Statutes, Article 4542a-1.

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 14, 1993.

TRD-9333660 Fred S Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: January 4, 1994

Proposal publication date: September 7, 1993

For further information, please call: (512) 832-0661

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Chapter 291. Pharmacies

Community Pharmacy (Class A)

• 22 TAC §291.33, §291.36

The Texas State Board of Pharmacy adopts amendments to §291.33 and §291.36, concerning Operational Standards and Class A Pharmacies Compounding Sterile Pharmaceuticals, with changes to the proposed text as published in the June 25, 1993, issue of the *Texas Register* (18 TexReg 4179).

These amendments clarify requirements for a patient counseling area in Class A Pharmacies by outlining guidelines for the area which must be suitable for confidential patient counseling.

Comments were received from Executive Director of the Texas Pharmaceutical Association and Executive Director of the Texas Federation of Drug Stores.

Executive Director, Texas Pharmaceutical Association expressed the concerns with two areas of the rules.

Regarding the requirement that the area "be designed to allow pharmacist/patient communication without the communication being easily overheard by anyone other than the patient or patient's agent," he noted: "... We believe that it would be difficult to establish an area in all pharmacies in which pharmacist/patient communications can be conducted without being easily overheard by anyone other than the patient or patient's agent.... We believe that the area should be designed to maintain the confidentiality and privacy of the information exchange and that this language would be preferable to requiring that an area be designed to prevent conversations from being easily overheard..."

Regarding the requirement that the area "not be directly adjacent to the check-out or cash register area unless the check-out or cash register is for the exclusive use of the counseling area," he stated: " ... in particularly small stores the entire area available may be high traffic ... and the only realistic space may be near the cash register ... We can envision creative ways in which a wall or barrier could be placed flush with the cash register allowing a great deal of privacy immediately next to this particular device... "

Executive Director, Texas Federation of Drug Stores stated: "...The Texas Federation of Drug Stores supports the concepts of clauses (i) and (ii) of the proposed rule ... We do, however, propose a small wording change to the proposed clause (i) by deleting the reference to, and the specific phrase of, "the prescription department or to." We believe to reference the prescription department may cause confusion..." "The Federation members respectfully request that the Board vote to delete all of the proposed clauses (iii) and (iv), concerning the restriction of the use of the check-out area and the area not to be in a high traffic flow area." "We oppose these two proposals because we sincerely believe that both would prove to be unworkable in a real world situation ... We firmly believe that a check-out area, if appropriately constructed, can be an adequate area for good patient counseling that can also be utilized for an occasional sale of an OTC drug product or a get well card. . .. As for the proposed clause (iv), the phrase "high traffic flow area" is vague. ... The word "high" depends upon one's perspective."

The Board generally agrees with the comments from both the Texas Pharmaceutical

Association and the Texas Federation of Drug Stores. We agree that a pharmacy could not meet the requirements specified in the proposed language but still have an area which was suitable for confidential patient counseling. Therefore, the proposed language has been modified to specify that the area for patient counseling must be: easily accessible to both patient and pharmacists and not allow access to prescription drugs, and be designed to maintain the confidentiality and privacy of the pharmacist/patient communication. Although the Board agreed that the requirements for the patient counseling area should not include clause (iii) and (iv) in the proposed language, the Board believed that these criteria should be included in a section which specifies those factors the Board may use in determining if an area is suitable for patient counseling. The Board believes that a listing of these factors which may be considered is necessary so that the licensee is informed.

The amendments are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1): §17(b)(2) which gives TSBP the authority to specify minimum standards for professional environment, technical equipment, and security in the prescription dispensing area; §17(b)(3) which gives TSBP the authority to specify procedures for the delivery of prescription drugs or devices within the practice of pharmacy; and §16(a) which gives TSBP the authority to adopt rules for the proper administration and enforcement of the Act.

§291.33. Operational Standards.

(a) (No change.)

(b) Environment.

(1) General requirements.

(A)-(C) (No change.)

(D) A Class A pharmacy initially licensed after June 1, 1989, shall contain an area which is suitable for confidential patient counseling and beginning January 1, 1995, all Class A pharmacies shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following.

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(E)-(F) (No change.)

(2) (No change.)

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

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

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

(d) Operational Standards.

(1) (No change.)

(2) Environment.

(A) General requirements.

(i)-(vi) (No change.)

(vii) If prescription drug orders are delivered to the patient at the pharmacy, beginning January 1, 1995, the pharmacy shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following.

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(B)-(C) (No change.)

(3)-(10) (No change.)

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9333737

Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Effective date: January 4, 1994

Proposal publication date: June 25, 1993

For further information, please call: (512) 832-0661

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter G. Plain Language Requirements for Health Benefit Policies

• 28 TAC §3.601, §3.602

The State Board of Insurance and the Commissioner of Insurance of the Texas Department of Insurance adopts new §3.601 and §3.602, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8337).

These sections are necessary to set out the requirements for plain language to be used with health benefit plans as mandated by Insurance Code, Article 26. 43.

These sections set out the requirements for plain language for health benefit plans. Section 3.601 contains the purpose, scope, applicability and definitions used in these sections. New section 3.602 provides that health bene-

fit plan certificates, policies, evidences of coverage, endorsements, amendments, applications and riders must be written in plain language in order to be approved by the commissioner of insurance or issued by the health carrier. Section 3.602 also sets out the requirements and the test and methodology of testing for plain language to be used for health benefit plans, certificates, policies, evidences of coverage, endorsements, amendments, applications, and riders.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Insurance Code, Articles 26.43, 3.42, I. 03A and §1.23 of House Bill 1461, 73rd Legislature, Regular Session. Insurance Code, Article 26.43 requires all health benefit plan certificates, policies and riders be written in plain language, describes the statutory requirements for plain language, and requires the commissioner of insurance to prescribe the minimum score on the Flesch reading ease test or an equivalent test selected by the commissioner to achieve the plain language requirement. 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, Article 1.03A contains the requirements for rules of general application to be adopted by the commissioner of insurance and §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.

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 15, 1993.

TRD-9333695 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: January 5, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 463-6327

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Subchapter W. Miscellaneous Rules for Group and Individual Accident and Health Insurance

• 28 TAC §3.3602

The State Board of Insurance and the Commissioner of Insurance of the Texas Department of Insurance adopts an amendment to §3.3602, without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8339).

Section 3.3602 is amended to provide that the section applies only to policies issued, delivered, or renewed prior to January 1, 1994. Conversion or continuation of policies issued, delivered, or renewed after that date will be governed by Subchapter F of this title (relating to Group Health Insurance Mandatory Conversion Privilege). This change is required by the amendments to Insurance Code, Article 3.51-6, §1(d)(3), enacted by the 73rd Legislature.

The amendment to this section will leave §3.3602 in place to govern conversion or continuation of policies issued, delivered, or renewed prior to January 1, 1994. Policies issued, delivered, or renewed after to that date, will be governed by Subchapter F of this title (relating to Group Health Insurance Mandatory Conversion Privilege).

No comments were received regarding adoption of the amendment.

This amendment is proposed under Insurance Code, Articles 1.03A, 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. Article 3.51-6 requires the board to issue rules and regulations to establish minimum standards for benefits under conversion policies. Regulations will be promulgated to accomplish that purpose in Subchapter F of this chapter (relating to Group Health Insurance Mandatory Conversion Privilege). Those sections, in accordance with the statutory mandate, will be effective for policies issued, delivered, or renewed on or after January 1, 1994. Consequently this section must be amended to conform to that statute and the rules promulgated as a result of that statute. 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, Article 1.03A, sets forth the requirements for rules of general application to be adopted by the commissioner of insurance. 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.

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 15, 1993.

TRD-9333694 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: January 5, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Commission on Jail Standards

Chapter 275. Supervision of Inmates

• 37 TAC §275.2

The Texas Commission on Jail Standards adopts repeal of §275.2, concerning Supervision of Inmates, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7405).

Repeal of this rule allows for adoption of a new rule which requires all corrections officers to be properly trained.

The repeal functions to allow adoption of a new rule which requires corrections officers be licensed and properly trained.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

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 7, 1993.

TRD-9333716 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: January 5, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-5505

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The Texas Commission on Jail Standards adopts new §275.2, concerning Supervision of Inmates, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7405).

The new rule establishes requirements for corrections officers to be licensed by the Texas Commission on Law Enforcement Officer Standards and Education.

The new rule functions to ensure corrections officers are properly trained and that they meet the licensing requirements of the Texas Commission on Law Enforcement Officer Standards and Education.

No comments were received regarding adoption of the new section.

The new rule is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

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 7, 1993.

TRD-9333668 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: January 5, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-5505

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Chapter 281. Food Service in County Jails

• 37 TAC §281.3

The Texas Commission on Jail Standards adopts repeal of §281.3, concerning Food Service in County Jails, without changes to the as proposed text published in the October 22, 1993 issue of the *Texas Register* (18 TexReg 7406).

Repeal of the rule allows for adoption of a new rule which clarifies requirements for serving balanced meals in county jails.

The repeal functions to allow adoption of a new rule which will ensure a balanced diet is served by requiring review of menus by a licensed dietitian.

No comments were received regarding adoption of the repeal

The repeal is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

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 7, 1993.

TRD-9333670 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date. January 5, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-5505

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• 37 TAC §281.3, §281.5

The Texas Commission on Jail Standards adopts new §281.3 and amendment of §281.5, concerning Food Service in County Jails, with changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7406).

The new rule and amendment clarify requirements for preparation and serving of food in county jails.

The new rule and amendment will function to ensure a balanced diet, approved by a dietitian, is served under staff supervision.

Three comments were received. The comment from the Texas State Board of Examiners of Dietitians recommended deletion of the term "nutritionist" due to the fact that some nutritionists may not have adequate training to determine balanced diet requirements. The term "nutritionist" has been deleted.

The other two comments were received from individuals representing small counties. The individuals stated their belief that having the menus approved by a dietitian would be burdensome as some of the small counties do not have a dietitian on board. The Texas Department of Health has contacted this agency and has committed to reviewing, at no charge, menus from any county. As this can be accomplished by facsimile or postal service, it is not anticipated counties which do not have a dietitian available will incur any expense.

The new rule and amendment are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

§281.3. Balanced Diet. Except in emergency situations, meals shall be served in accordance with a written menu approved and reviewed annually for compliance with nationally recognized allowances for basic nutrition by a qualified dietitian.

§281.5. Staff Supervision. Food shall be prepared and served only under the immediate supervision of a staff member or contract employee. Care shall be taken that hot foods are served reasonably warm and that cold foods are served reasonably cold. Inmates who prepare or serve food should have a food handlers certificate.

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 7, 1993.

TRD-9333669 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: January 5, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-5505

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 73. Civil Rights

The Texas Department of Human Services (DHS) adopts the repeal of §§73. 4001, 73.4005, 73.4006, 73.4008, 73.4010, 73.4011, 73.4012, and 73.4101-73. 4115, concerning administrative fraud disqualification hearings and hearing procedure in its Civil Rights chapter, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8173).

The justification for the repeals is to enable DHS to move these rules to its Legal Services chapter. DHS is adopting the rules in Chapter 79 in this issue of the *Texas Register.*

The repeals will function by enabling DHS to adopt rules concerning administrative fraud disqualification hearings in its Legal Services rule chapter.

No comments were received regarding adoption of the repeals.

Subchapter OO. Administrative Fraud Disqualification Hearings

• 40 TAC §§73.4001, 73.4005, 73.4006, 73.4008, 73.4010-73. 4012

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The repeals implement Human Resources Code, §33.002(c).

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 15, 1993.

TRD-9333696 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: February 1, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 450-3765

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Subchapter PP. Hearing Procedure

- **40 TAC §§73.4101-73.4115**

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The repeals implement Human Resources Code, §33.002(c).

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 15, 1993.

TRD-9333697 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: February 1, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 450-3765

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Chapter 79. Legal Services

Subchapter T. Administrative Fraud Disqualification Hearings

- **40 TAC §§79.1901-79.1922**

The Texas Department of Human Services (DHS) adopts new §§79.1901-79. 1922, concerning administrative fraud disqualification hearings, in its Legal Services chapter. New §79.1914 is adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8179). New §§79.1901-79.1913 and 79.1915-79.1922 are adopted without changes to the proposed text, and will not be republished.

The justification for the new sections is to move administrative fraud disqualification hearings rules from Chapter 73, Civil Rights, to Chapter 79. DHS believes the rules belong more appropriately in the Legal Services chapter. The repeal of the sections from Chapter 73 is adopted in this issue of the *Texas Register*.

In addition to moving and renumbering the rules, DHS is adopting changes in §§79.1901, 79.1911, 79.1914, 79.1915, 79.1917, 79.1918, and 79.1919 (old §§73.4001, 73.4104, 73.4107, 73.4108, 73.4110, 73.4111, and 73.4112) which make these sections consistent with amendments DHS adopted in the May 12, 1992, issue of the *Texas Register* (17 TexReg 3477). Those amendments implemented federal regulations for Aid to Families with Dependent Children (AFDC) program administrative disqualification hearings and made the process the same as established procedures for Food Stamp program intentional program violations. In addition, DHS has added provisions of federal waivers in §§79. 1905(a), 79.1906, 79.1912(a)-(c), 79.1913, 79.1914(b), 79.1916(b), and 79.1918.

The new sections will function by properly placing DHS's administrative disqualification hearings rules in Chapter 79, ensuring consistency in AFDC and Food Stamp program requirements, and implementing federal waiver requirements.

No comments were received regarding adoption of the new sections; however, DHS is adopting §79.1914(a) with a change to make the subsection applicable to both AFDC and Food Stamps.

The new sections are 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. The new sections implement Human Resources Code, §33.002(c).

§79.1914. Recessing the Hearing.

(a) If the household member, the investigator, or the hearing officer requests to have the Food Stamp or Aid to Families with Dependent Children (AFDC) record at the hearing, the hearing may be recessed to obtain the record. The household member may question or refute any additional testimony or evidence after a recess.

(b) The hearing officer may order a recess to request and receive additional testimony or evidence. He advises the household member or his representative of the reason for the recess and the nature of the additional requested information. The household member may question or refute any additional testimony or evidence after a recess.

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 15, 1993.

TRD-9333698 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: February 1, 1994

Proposal publication date: November 9, 1993

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 notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Texas Department of Insurance at a public meeting held at 2:00 p.m. on December 13, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, adopted the surety bond form filed by the Texas Department of Health on behalf of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments entitled "Fitting and Dispensing of Hearing Instruments Surety Bond," form number FDHI-1193. The form was filed in the Chief Clerk's Office on November 23, 1993.

The Fitting and Dispensing of Hearing Instruments Surety Bond (Bond) is required of fitters and dispensers of hearing instruments in accordance with Senate Bill 953 passed in the 73rd Legislative Session. The Bond is conditioned on the fitter's or dispenser's payment of all: taxes and contributions due to the State of Texas and its political subdivisions; and, judgments rendered as a result of negligently or improperly dispensing hearing instruments or for breaching a contract relating to the dispensing of hearing instruments. The limit of the Bond is set at $10,000.

The full text of the surety bond form filing (Reference Number O-1193-30), was published in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8870).

The Texas Department of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15 and 5.97.

The full text of the surety bond form entitled Fitting and Dispensing of Hearing Instruments Surety Bond, as adopted by the Texas Department of Insurance is filed with the Chief Clerk under (Reference Number O-1193-30) and is incorporated by reference by Commissioner Order Number 93-1197.

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 adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

TRD-9333662 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: January 6, 1994

Proposed publication date: December 3, 1993

For further information, please call: (512) 463-6328

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 Department of Agriculture

Thursday, January 6, 1994, 10:00 a.m.

2626 South Loop West, Suite 130

Houston

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1982) by El Rey Distributors as petitioned by El Tule Farms.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: December 14, 1993, 2:18 p.m.

TRD-9333645

Thursday, January 13, 1994, 10:00 a.m.

1700 North Congress Avenue, Room 928B

Austin

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§74.001-74.008 (Vernon Supplement 1993) by Krenek Ag Supply.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: December 15, 1993, 9:15 a.m.

TRD-9333672

Thursday, January 27, 1994, 10:00 a.m.

1700 North Congress Avenue, Room 928B

Austin

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§74.001-74.008 (Vernon Supplement 1993) by James F. Gavranovic.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: December 15, 1993, 9:14 a.m.

TRD-9333671

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Texas Commission on Alcohol and Drug Abuse

Tuesday, December 21, 1993, 9:00 a.m.

710 Brazos

Austin

Emergency Meeting

According to the complete agenda, the Offender Credentialing Committee call to order; review applications for the Licensed Chemical Dependency Counselor; and adjourn. The emergency status was necessary to allow sufficient time to review criminal history information on applications for chemical dependency counselor licensure.

Contact: Mike Ezzell, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8257.

Filed: December 16, 1993, 8:57 a.m.

TRD-9333720

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Texas Education Agency (TEA)

Tuesday, January 4, 1994, 8:30 a.m.

Room 355, Hartland Building, 1717 West Sixth Street

Austin

According to the complete agenda, the State Committee of Practitioners for Chapter 1 Handicapped will discuss proposed amendments to Title 19, Texas Administrative Code, Chapter 89, Subchapter G, concerning Special Education.

Contact: Shirley Sanford, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9362.

Filed: December 14, 1993, 2:22 p.m.

TRD-9333647

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Department of Information Resources

Friday, December 17, 1993, 9:30 a.m.

1821 Rutherford Lane, Suite 200, Room 217

Austin

Emergency Revised Agenda

According to the emergency revised agenda summary, the Board met in adoption of October 15, 1993 meeting minutes; executive director's report, division summaries, financial statements, parity report; discussion and emergency adoption 1 TAC 201.5(g), Quality Assurance Process for Major Information Resource Projects; discussion of continuing education program for information resources managers; discussion and action on issues related to proposed transfer of functions between the department and the General Services Commission; other business and executive session.

The emergency status was necessary due to personnel matters.

Contact: John Hawkins, 300 West 15th Street, Austin, Texas, (512) 475-4714.

Filed: December 15, 1993, 3:56 p.m.

TRD-9333717

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Midwestern State University

Monday, December 20, 1993, 10:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

According to the complete agenda, the Board of Regents discussed the possible sale of university property off of Southwest Parkway in Executive Session as allowed by the Texas Open Meetings Act, §2(f).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: December 14, 1993, 4:55 p.m.

TRD-9333663

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Texas Natural Resource Conservation Commission

Monday, January 10, 1994, 10:00 a.m.

William B. Travis State Office Building, Room 1-100, 1701 North Congress Avenue

Austin

According to the agenda summary, the Office of Hearings Examiner will hold a hearing before a hearings examiner on Bartonville Water Supply Corporation's (Bartonville WSC) request to the Commission for a cease and desist order against the city of Highland Village. Bartonville WSC alleges that the city of Highland Village is providing water utility service within Bartonville WSC's service area in Denton County, Texas, Docket Number 30132-D.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875

Filed: December 14, 1993, 5:10 p.m.

TRD-9333666

Monday, January 10, 1994, 10:00 a.m.

John H. Reagan State Office Building, Room 109, 105 West 15th Street

Austin

According to the agenda summary, the Office of Hearings Examiners will hold for a hearing before a hearings examiner on San Jacinto Utility Corporation's petition requesting the commission to issue an order to compel Johnson County Rural Water Supply Corporation to terminate water utility service to mutual customers of both utilities for non-payment of sewer utility service provided by San Jacinto Utility Corporation. San Jacinto Utility Corporation provides sewer utility service to approximately 25 customers in the Mountain View Estates Subdivision, in the unincorporated town of Lillian, Texas located off of FM 917 in Johnson County. Johnson County Rural WSC provides water utility service to said customers. Docket Number 30144-X.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7898.

Filed: December 14, 1993, 5:09 p.m.

TRD-9333665

Wednesday, January 12, 1994, 9:00 a.m.

Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold an agenda hearing on Sportsman's World Municipal Utility District of Palo Pinto County's application for authority to adopt and impose a standby fee on undeveloped property in the district.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-8161.

Filed: December 14, 1993, 5:09 p.m.

TRD-9333664

Thursday, January 20, 1994, 10:00 a.m.

Mount Sylvan Community Center, Highway 10, North

Mount Sylvan

According to the agenda summary, the Office of Hearings Examiners will hold a hearing before a hearings examiner on a petition submitted by rate payers of Mount Sylvan Water System, Inc. requesting that Mount Sylvan's water CCN Number 12138 be revoked for failure to provide continuous and adequate service to the water service area. Docket Number 30143-X.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: December 15, 1993, 2:25 p.m.

TRD-9333710

Wednesday, January 26, 1994, 9:00 a.m.

Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold an agenda hearing on Cornerstones Municipal Utility District's application for standby fees to be imposed on undeveloped property in the district. The amount of the standby fee requested is $5.00 per lot for single family lots and $20 per acre for commercial reserves.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161

Filed: December 15, 1993, 2:24 p.m.

TRD-9333708

Wednesday, January 26, 1994, 9:00 a.m.

Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold an agenda hearing on Barker Cypress Municipal Utility District of Harris County's application for standby fees on undeveloped property in the district.

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: December 15, 1993, 2:24 p.m.

TRD-9333709

Wednesday, January 26, 1994, 9:00 a.m.

Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold an agenda hearing on Action Municipal Utility District of Hood and Johnson Counties' application to levy impact fees for new water and sewer service connections within their service area.

Contact: Randy Nelson, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161

Filed: December 14, 1993, 5:10 p.m.

TRD-9333667

Public Utility Commission of Texas

Tuesday, December 28, 1993, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on sanctions in Docket Number 12188-Complaint of Frederick L. Kay against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 14, 1993, 4:06 p.m.

TRD-9333661

Wednesday, February 23, 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 12269-application of Southwestern Electric Service Company to amend certificate of convenience and necessity for proposed transmission line within Limestone county.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas, (512) 458-0100.

Filed: December 15, 1993, 2:36 p.m.

TRD-9333712

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Railroad Commission of Texas

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference, Room 1-111

Austin

Emergency Revised Agenda

According to the complete emergency agenda, the Railroad Commission of Texas held a meeting to discuss gas utilities Docket Number 8341, statement of intent filed by West Texas Gas, Inc. to change city gate rates charged to the city of Fort Stockton, Texas. The emergency status was necessary because the docketed filing received after regular agenda was prepared; rate increased will go into effect by operation of law before next regularly scheduled open meeting if not suspended on December 20, 1993.

Contact: James Brazell, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7013.

Filed: December 16, 1993, 9:55 a.m.

TRD-9333735

Monday, December 20, 1993, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Emergency Revised Agenda

According to the complete emergency revised agenda, the Railroad Commission of Texas met to consider a motion for rehearing for Docket Number 03-0202545, application of Goldrus Environmental Services, Inc. to inject fluid into a reservoir not productive of oil and gas, Young Lease, Well Number One, Quicksand Creek (Wilcox) Field, Newton County Texas. The emergency status was necessary for action on the motion of rehearing is required at the next regularly scheduled meeting, December 20, 1993, otherwise the motion for rehearing will be overruled by operation of law and the commission will lose jurisdiction.

Contact: Jeff Pender, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6802.

Filed: December 16, 1993, 9:54 a.m.

TRD-9333734

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Structural Pest Control Board

Thursday, January 6, 1994

Thompson Conference Center, 2405 East Campus Drive, Room 1.122

Austin

According to the agenda summary, the advertising committee will hear public comments; discuss educational requirements; and discuss subcommittee report on inspection criteria and consumer information.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: December 15, 1993, 2:36 p.m.

TRD-9333713

Tuesday, January 25, 1994, 9:00 a.m.

Harris County Flood Control District, 9900 Northwest Freeway, Room 220

Houston

According to the complete agenda, the Incidental Use committee will hear public comments; discussion-Incidental Use; develop proposed regulations concerning Incidental Use; and develop proposed regulations concerning Incidental Use.

Contact: Benny M. Mathis, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066

Filed: December 15, 1993, 2:49 p.m.

TRD-9333714

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Texas Department of Transportation

Wednesday, December 22, 1993, 10:00 a.m.

Dewitt C. Greer Building (First Floor), 125 East 11th Street

Austin

According to the agenda summary, the Texas Transportation Commission will approve minutes; contract awards/rejections/defaults/assignments/settlements; programs: 1995 PDP district apportionments and technical correction to 1994 PDP; routine minute orders; toll projects: authorize Phase 3 of Dallas North Tollway and approve TTA feasibility study of West Texas corridor; district/division reports; authorize: purchase of land for El Paso District Office, environmental/IH/US/SH and FM Road projects, and travel information center; approve appointment to Grand Parway Association board; rulemaking: proposed adoption of 43 TAC §13.2 and §25.1; final adoption of 43 TAC §§1.80-1.85, 31.11, 31.3, and 31.36; public transportation: approve Section 18 funds, oil overcharge funding, and ad hoc advisory panel; authorize memorandum of cooperation with Mexico; and executive session per Government Code, Chapter 551.

Contact: Diane L. Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: December 14, 1993, 2:03 p.m.

TRD-9333644

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University of Houston

Monday, December 20, 1993, 2:00 p.m.

S&R II, Room 75, 4800 Calhoun Boulevard

Houston

According to the agenda summary, the Animal Care Committee discussed and/or acted upon the following: approval of November minutes; renewal of protocols; review of Animal Care and Use Program; inspection of facilities; contract with County pound; and January meeting moved to January 24, 1994, because of Martin L. King holiday on January 17, 1994.

Contact: Julie T. Norris, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: December 14, 1993, 2:18 p.m.

TRD-9333646

University of North Texas

Saturday, December 18, 1993, 9:30 a.m.

201 University of North Texas, Administration Building

Denton

Emergency Meeting

According to the complete emergency agenda, the Facilities Committee, Board of Regents construction met on and renovation projects and architect selections. The emergency status was necessary because the above projects will be funded by a portion of the proceeds of recent bond issue, and we need to let the Bond Review Board in Austin know how the money will be spent.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 369-8515

Filed: December 15, 1993

TRD-9333719

Tuesday, December 21, 1993, 10:30 a.m.

201 Administration Building, University of North Texas

Denton

According to the complete agenda, the Board of Regents ot the University of North Texas will meet in executive session (Ath-

letic Director Search); construction/renovation projects and architect selections.

Contact: Jan Dobbs, P.O Box 13737, Denton, Texas 76203, (817) 369-8515.

Filed: December 16, 1993, 9:55 a.m.

TRD-9333736

Regional Meetings

Meeting Filed December 14, 1993

The Lower Rio Grande Valley Development Council Board of Directors Meeting met in the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, December 20, 1993, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas (210) 682-3481. TRD-9333638.

The Wise County Appraisal District Agricultural Advisory Board will meet at 206 South State Street, Decatur, December 21, 1993, at 11:00 a.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9333639.

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Meeting Filed December 15, 1993

The Cash Water Supply Corporation Board of Directors met in the Corporation Office, FM 1564, South of, Greenville, December 20, 1993, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9333718.

The Edwards County Appraisal District Board of Directors will meet in the New County Annex Building, Rocksprings, December 21, 1993, at 10: 00 a.m. Information may be obtained from Natalie Pruitt, P.O. Box 378, Rocksprings, Texas 78880, (210) 683-4189. TRD-9333707.

The Erath County Appraisal District Appraisal Review Board held an emergency meeting at 1390 Harbin Drive, Stephenville, December 16, 1993, at 9:00 a.m. The emergency meeting was necessary because the Board needed to approve supplement before the property taxes become delinquent. Information may be obtained from Mitzi Meekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9333703.

The Hamilton County Appraisal District Board will meet at 119 East Henry, Hamilton, December 21, 1993, at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (817) 386-8945. TRD-9333715.

The Lower Neches Valley Authority Board of Directors will meet in LNVA Office Building, 7850 Eastex Freeway, Beaumont, December 21, 1993. at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9333700.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, January 13, 1994, at 7:00 p.m. Information may be obtained from Ron Procter, Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9333706.

The Texas Turnpike Authority Board of Directors met in an emergency revised agenda at the Dallas Marriott Quorum, 14901 Dallas Parkway, Dallas, December 16, 1993, at 10:00 a.m. The emergency revised agenda was necessary due to TTA being a potential participate with Rio San Juan and State of Tamaulipas, Mexico in Matamoros-Reynosa Turnpike. TTA will not meet prior to January 12, 1994 when tenders for same are due. Information may be obtained from Harry Kabler, P.O. Box 190369, Dallas, Texas 75219. TRD-9333702.

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Commission on Alcohol and Drug Abuse (TCADA) invites proposals from qualified consultants to assist in the evaluation of substance abuse treatment programs. Under the Texas Health and Safety Code, Chapter 461.012(2) TCADA has a mandate to evaluate substance abuse treatment programs.

The contractor will evaluate a small number of substance abuse treatment programs (minimum of three) funded by TCADA. TCADA has the option of increasing the contract to provide for the evaluation of additional programs. Programs to be evaluated will be selected by TCADA, although participation of programs will be voluntary.

The primary goal of this project is to conduct an outcome evaluation of a small number of substance abuse treatment programs in a manner that is practical, economical, scientifically valid, and clinically useful. The evaluation should address multidimensional outcomes, and should include a follow-up period of at least six months post-treatment discharge.

The treatment process should also be evaluated in order to document and describe the types and number of services actually provided to clients in treatment.

To obtain a complete copy of this RFP, contact Kelly Reichenbach, Texas Commission on Alcohol and Drug Abuse, 710 Brazos, Austin, Texas 78701, (512) 867-8735.

All proposals in response to the RFP must be received by 5:00 p.m. on January 14, 1994.

A panel of program and administrative staff from TCADA will score and rank proposals based on criteria described in the Request for Proposed (RFP) Consultant Contract. The initial award period for this work will be February 1, 1994-August 31, 1994, with TCADA having the option of awarding funds for September 1, 1994-August 31, 1993

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

TRD-9333634 David P. Tatum
Interim Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: December 14, 1993

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Texas Department of Commerce

Request for Proposals

The Texas Department of Commerce (Commerce), announces a Request for Proposals (RFP) to solicit responses to select a number of organizations to develop family literacy projects. The family literacy projects are solicited in order to break the intergenerational cycle of illiteracy by supporting the development of literacy programs that build families of readers in the State of Texas.

Detailed information regarding the project format is set forth in the Request for Proposal Instructions which will be available on December 27, 1993, at the following location: Texas Department of Commerce, Work Force Development Division, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711-2728.

The deadline for receipt of proposals in response to this request will be January 26, 1994, at 5:00 p.m. (CST). Responses received after this deadline will not be considered.

Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. Commerce intends to use responses as a basis for further negotiation of specific project details with potential contractors. Commerce will base its choice on demonstrated competence qualifications, and evidence of superior conformance with criteria.

This RFP does not commit Commerce to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. Commerce specifically reserves the right to vary all provisions set forth any time prior to execution of a contract where Commerce deems it to be in the best interest of the State of Texas.

Availability of funds for the family literacy projects is subject to the approval of Commerce.

For further information regarding this notice, or to obtain copies of the RFP Instructions, please contact: Martha Alworth, Texas Department of Commerce, Work Force Development Division, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711-2728, (512) 320-9498 (voice), (512) 320-9698 (TTD).

Issued in Austin, Texas, on December 13, 1993.

TRD-9333643 Cathy Bonner
Executive Director
Texas Department of Commerce

Filed: December 14, 1993

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Texas Education Agency

Correction of Error

The Texas Education Agency adopted amendments to §§175.122, 175.125, 175. 127, and 175.128, concerning

minimum standards for operation of Texas proprietary schools. The rules appeared in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8523).

In §175.128(b), the two cross-references to §175.127 are incorrect. In order, the correct references are to: "175.127(b)(12) and §175.127(b)(12)(C) (v).

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Texas Department of Health

Correction of Error

The Texas Department of Health submitted adopted amendments to 25 TAC §33.122. The rule appeared in the November 12, 1993, *Texas Register* (18 TexReg 8355).

The following error was due to an error in the agency's submission. In §33.122, the language for (c)(1)-(5) was inadvertently left out. The subsection should read:

"(c) Adolescent preventive service visits are available once at each of the following time periods:

(1) 11 years;

(2) 13 years;

(3) 15 years;

(4) 17 years; and

(5) 19 years."

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Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: North Richland Hills Neighborhood Health Care Center, North Richland Hills, R19854; William A. Hand, Jr., M.D., El Campo, R15391; G. D. S. Chiropractic, Inc., Humble, R16812; BackPain of Houston, Houston, R16904; East Side Medical Clinic, Dallas, R17634; Glenn C. Armen, M.D. , Houston, R18306; Larry E. Freeman, D.D.S., Houston, R19031; Isaac L. Morrison, M.D. & Associates, Houston, R19067; Northside Medical Associates, P. A., Dallas, R19162; Keller Chiropractic Center, Keller, R19925; Crown X Ranch, Marfa, R19034; Weststar Management, Houston, R18157.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Acting Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1993.

TRD-9333594 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 13, 1993

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Notice of Intent to Revoke Radioactive Material License

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Permian General Hospital, Andrews, L03158.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Acting, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on December 13, 1993.

TRD-9333595 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 13, 1993

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Texas Department of Human Services

Public Notice of Closed Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is closing the solicitation for new Medicaid beds in Jim Hogg County, County Number 124, which appeared in the December 10, 1993, issue of the *Texas Register* (18

TexReg 9223). The solicitation is being closed effective the date of this public notice.

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

TRD-9333699 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Filed: December 15, 1993

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance submitted a notification printed in the "In Addition Section". The notice was published in the October 1, 1993, *Texas Register* (18 TexReg 6760). Due to a typographical error by the Texas Department of Insurance, Item #3 should read as follows: "CHER A. BUMPS AND ASSOCIATES, INC., a foreign third party administrator. The home office is in Oklahoma City, Oklahoma".

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission submitted a Request for Qualifications, which appeared in the "In Addition Section", in the December 3, 1993, issue of the *Texas Register* (18 TexReg 9023).

Due to an error in the second column, paragraph six, the closing date for the Employer Trip Reduction Program Request for Qualifications should be changed from "December 11, 1993" to "January 3, 1993".

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Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the tenth day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was entered regarding Trace, Inc. (Permit Number 12822-01) on December 3, 1993, assessing $8,080 in administrative penalties with $3,580 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Smith, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2059.

An agreed enforcement order was entered regarding Intercoastal Terminal, Inc. (Solid Waste Registration Number 30773) on December 2, 1993, assessing $319,440 in administrative penalties with $293,440 deferred.

Information concerning any aspect of this order may be obtained by contacting H. Glenn Hall, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2057.

An agreed enforcement order was entered regarding Western Litho and Supply Company (Permit Number 02165) on December 3, 1993, assessing $30,000 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Robert Martinez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8098.

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

TRD-9333631 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 13, 1993

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Notice of Opportunity to Comment on Administrative Actions

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions.

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AO's) pursuant to §382.096 of the Texas Clean Air Act, Health and Safety Code, Chapter 382. Section 382.096 of the Act requires that the TNRCC may not approve these AO's unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 19, 1994. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AO's is available for public inspection at both the TNRCC's Central Office, located at 12124 Park 35 Circle, Austin, Texas 78753, (512) 239-1000 and at the applicable Regional Office listed below. Written comments about these AO's should be sent to the Staff Attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 19, 1994. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-1850. The TNRCC Staff Attorneys are available to discuss the AO's and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AO's should be submitted to the TNRCC in writing.

(1) COMPANY: A Kar Company; LOCATION: Haltom City, Tarrant County; TYPE OF FACILITY: motor vehicle sales operation; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the vehicles were originally equipped. PENALTY: $500; STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466; REGIONAL

OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Arlington, Texas 76116.

(2) COMPANY: All Exotic Marble, Incorporated; LOCATION: Forney, Kaufman County; TYPE OF FACILITY: cultured marble facility; RULE VIOLATED: TNRCC Rule 30 TAC §116.110, unauthorized construction and operation of a cultured marble facility. PENALTY: $0; STAFF ATTORNEY: Bill Zeis, (512) 239-0670; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Arlington, Texas 76116.

(3) COMPANY: Austex Molding Company; LOCATION: Austin, Travis County; TYPE OF FACILITY: expanded-polystyrene molding plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110, unauthorized construction and operation of an expanded- polystyrene molding plant. PENALTY: $0; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

(4) COMPANY: A-Way Tank Services, Inc.; LOCATION: Giddings, Lee County; TYPE OF FACILITY: sandblasting operations at water storage tanks; RULE VIOLATED: TNRCC Rule 30 TAC §101.4, nuisance level lead emissions; TNRCC Rule 30 TAC §111.135(c), failure to apply an approved method of emissions control. PENALTY: $0; STAFF ATTORNEY: Katharine Marvin, (512) 463-1623; REGIONAL OFFICE: 500 Lake Air Drive, Suite 1, Waco, Texas 76710, (817) 772-9240.

(5) COMPANY: Bear Custom Molding; LOCATION: Pilot Point, Denton County; TYPE OF FACILITY: woodworking plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110, unauthorized construction and operation of a woodworking plant. PENALTY: $0; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(6) COMPANY: Beaumont HSC Development Corp.; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: demolition project; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), failure to provide written notice of intention to demolish. PENALTY: $0; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838.

(7) COMPANY: Bonar Packaging, Incorporated; LOCATION: Tyler, Smith County; TYPE OF FACILITY: plastic bag manufacturing plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110, unauthorized construction and operation of an incinerator; TNRCC Rule 30 TAC §116.115, failure to comply with special provisions contained in air quality Permit Number 7539A. PENALTY: $7,625; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 1304 South Vine Avenue, Tyler, Texas 75701, (903) 595-2639.

(8) COMPANY: Brown and Root Services Corporation; LOCATION: Fort Bliss, El Paso County; TYPE OF FACILITY: asbestos abatement project; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), failure to comply with federal national emission standards for hazardous air pollutants (asbestos) due to failure to give proper notification. PENALTY: $7,000; STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(9) COMPANY: Cars-Trucks, Etc.; LOCATION: Houston, Harris County; TYPE OF FACILITY: used car lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the vehicles were originally equipped. PENALTY: $0; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(10) COMPANY: Comet Cleaners; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: dry cleaning facility; RULE VIOLATED: TNRCC Rule 30 TAC §115.521, failure to install a control device on the dryer exhaust. PENALTY: $500; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 772-9240.

(11) COMPANY: Clipper Enterprises, Inc.; LOCATION: Mt. Pleasant, Titus County; TYPE OF FACILITY: trailer manufacturing operation; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a), unauthorized construction and operation of a paint spray booth. PENALTY: $0; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 1304 South Vine Avenue, Tyler, Texas 75701, (903) 595-2639.

(12) COMPANY: Dollinger Steel Company; LOCATION: Gonzales, Gonzales County; TYPE OF FACILITY: steel fabrication plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a), conducted a sandblasting operation without first obtaining a Permit or qualifying for a Standard Exemption. PENALTY: $6,850; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5028, (210) 490-3096.

(13) COMPANY: Goodyear Tire and Rubber Company; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: tire tread injection molding plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.115, and Agreed Board Order Number 92-08(bb) and TNRCC Rule 30 TAC §116.115, failing to comply with special provision in Permit Number S-18281. PENALTY: $5, 000; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(14) COMPANY: Imperial Construction and Roofing; LOCATION: Fort Bliss, El Paso County; TYPE OF FACILITY: asbestos renovation abatement project; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), failure to comply with federal national emissions standards for hazardous air pollutants (asbestos) due to failure to give proper notification and due to improper asbestos removal and disposal. PENALTY: $0; STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(15) COMPANY: Miles, Inc.; LOCATION: Orange, Orange County; TYPE OF FACILITY: synthetic rubber manufacturing facility; RULE VIOLATED: TNRCC Rule 30 TAC §116.115, exceeding TNRCC Permit Number C-19663 allowable emission levels of Volatile Organic Compounds (VOCs) from production lines; TNRCC Rule TAC §116.116(a), exceeding emission levels of VOCs represented in their application for Permit Exemption Number X-22085. PENALTY: $134,750; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838.

(16) COMPANY: Mini-Max Construction; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: asbestos abatement project; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), failure to comply with federal national emissions standards for hazardous air pollutants (asbestos) due to improper notification before asbestos stripping or removal work. PENALTY: $0; STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466; REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(17) COMPANY: Ron Schmidt's Used-Cars; LOCATION: Spring, Harris County; TYPE OF FACILITY: motor vehicle sales operation; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the vehicles were originally equipped. PENALTY: $0; STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466; REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(18) COMPANY: Rosa's Auto Sales; LOCATION: Houston, Harris County; TYPE OF FACILITY: motor vehicle sales operation; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the vehicles were originally equipped. PENALTY: $0; STAFF ATTORNEY: Janis Boyd Hudson, (512) 239-0466; REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(19) COMPANY: Socio's Auto Sales; LOCATION: Houston, Harris County; TYPE OF FACILITY: used car lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the vehicles were originally equipped. PENALTY: $0; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(20) COMPANY: Tarrant County Processors Inc. (modification to Agreed Board Order Number 92-07(ss)); LOCATION: Keller, Tarrant County; TYPE OF FACILITY: waste cooking oil refining plant; RULE VIOLATED: TNRCC Rule 30 TAC §101.4, nuisance level odor emissions. The original order is modified because the Executive Director of the TNRCC has determined that the completed corrective actions have, at this time, sufficiently addressed the nuisance odor problem so that additional action currently is unnecessary. PENALTY: $0 (no additional penalty); STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(21) COMPANY: Texas By-Products, Incorporated; LOCATION: Wylie, Collin County; TYPE OF FACILITY: rendering plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.115, failure to comply with special conditions contained in Permit Exemption Number X-9219; TNRCC Rule 30 TAC §101.6, failure to report an upset condition. PENALTY: $12,000; STAFF ATTORNEY: Walter Ehresman, (512) 239-0573; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(22) COMPANY: Thorpe Insulation Services Company; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: asbestos abatement project; RULE VIOLATED: TNRCC Rule 30 TAC §101.20(2), failure to give proper notification before asbestos stripping or removal work, and failure to provide the name and location of the site where the asbestos-containing material would be deposited. PENALTY: $0; STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 5555 West Loop, Suite 300, Bellaire, Texas 77401, (713) 666-4964.

(23) COMPANY: Village Motors Company, LOCATION Sachse, Dallas County, TYPE OF FACILITY: motor vehicle sales operation; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c), offering for sale in the State of Texas motor vehicles which were not equipped with the emission control systems or devices with which the vehicles were originally equipped. PENALTY: $500, STAFF ATTORNEY: Peter T. Gregg, (512) 239-0450; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531

Issued in Austin, Texas, on December 15, 1993

TRD-9333686 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: December 15, 1993

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Texas Department of Transportation

Public Notice

The Federal Aviation Administration has approved the Disadvantaged Business Enterprise (DBE) Program and goal submission as submitted by the Texas Department of Transportation, Aviation Division for 14% participation for aviation contracts. This program is established in accordance with the requirements of the United States Department of Transportation to comply with the provisions of 49 Code of Federal Regulations, Part 23. The goals and methodology are available for inspection at the offices of the Texas Department of Transportation, Aviation Division, 410 East Fifth Street, Austin through January 21, 1994. Any written comments regarding the DBE Program will be accepted through February 5, 1994. These comments may be sent to the Texas Department of Transportation, Aviation Division, P.O. Box 12507, Austin, Texas 78711, attention Karon Wiedemann. The comments are for informational purposes only. For further information, please call: (512) 476-9262

Issued in Austin, Texas, on December 9, 1993

TRD-9333626 Diane L Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: December 13, 1993

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1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14

29 Friday, April 22	Monday, April 18	Tuesday, April 19
30 Tuesday, April 26	Wednesday, April 20	Thursday, April 21
31 Friday, April 29	Monday, April 25	Tuesday, April 26
32 Tuesday, May 3	Wedesday, April 27	Thursday, April 28
33 Friday, May 6	Monday, May 2	Tuesday, May 3
34 Tuesday, May 10	Wednesday, May 4	Thursday, May 5
35 Friday, May 13	Monday, May 9	Tuesday, May 10
36 Tuesday, May 18	Wednesday, May 11	Thursday, May 12
37 Friday, May 20	Monday, May 16	Tuesday, May 17
38 Tuesday, May 24	Wednesday, May 18	Thursday, May 29
39 Friday, May 27	Monday, May 23	Tuesday, May 24
40 Tuesday, May 31	Wednesday, May 25	Thursday, May 26
41 *Friday, June 3	Friday, May 27	Tuesday, May 31
42 Tuesday, June 7	Wednesday, June 1	Thursday, June 2
43 Friday, June 10	Monday, June 6	Tuesday, June 7
44 Tuesday, June 14	Wednesday, June 8	Thursday, June 9
45 Friday, June 17	Monday, June 13	Tuesday, June 14
46 Tuesday, June 21	Wednesday, June 15	Thursday, June 16
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 6	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6

68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29
75 Friday, October 7	Monday, October 3	Tuesday, October 4
Tuesday, October 11	THIRD QUARTERLY INDEX	
76 Friday, October 14	Monday, October 10	Tuesday, October 11
77 Tuesday, October 18	Wednesday, October 12	Thursday, October 13
78 Friday, October 21	Monday, October 17	Tuesday, October 18
79 Tuesday, October 25	Wednesday, October 19	Thursday, October 20
80 Friday, October 28	Monday, October 24	Tuesday, October 25
81 Tuesday, November 1	Wednesday, October 26	Thursday, October 27
82 Friday, November 4	Monday, October 31	Tuesday, November 1
83 Tuesday, November 8	Wednesday, November 2	Thursday, November 34
Friday, November 11	NO ISSUE PUBLISHED	
84 Tuesday, November 15	Wednesday, November 9	Thursday, November 10
85 Friday, November 18	Monday, November 14	Tuesday, November 15
86 Tuesday, November 22	Wednesday, Novmber 16	Thursday, November 17
87 Friday, November 25	Monday, November 21	Tuesday, November 22
Tuesday, November 29	NO ISSUE PUBLISHED	
88 Friday, December 2	Monday, November 28	Tuesday, November 29
89 Tuesday, December 6	Wednesday, November 30	Thursday, December 1
90 Friday, December 9	Monday, December 5	Tuesday, December 6
91 Tuesday, December 13	Wednesday, December 7	Thursday, December 8
92 Friday, December 16	Monday, December 12	Tuesday, December 13
93 Tuesday, December 20	Wednesday, December 14	Thursday, December 15
94 Friday, December 23	Monday, December 19	Tuesday, December 20
95 Tuesday, December 27	Wednesday, December 21	Thursday, December 22
96 *Friday, December 30	Friday, December 23	Tuesday, December 27

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