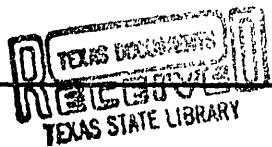


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Texas Register

Volume 17, Number 8, January 31, 1992

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

Governor - Appointments, executive orders, and proclamations

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

Secretary of State - opinions based on the election laws

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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 accumulative 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 a 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 17 (1992) is cited as follows: 17 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: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K -12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages and does not increase the cost of the *Texas Register*.

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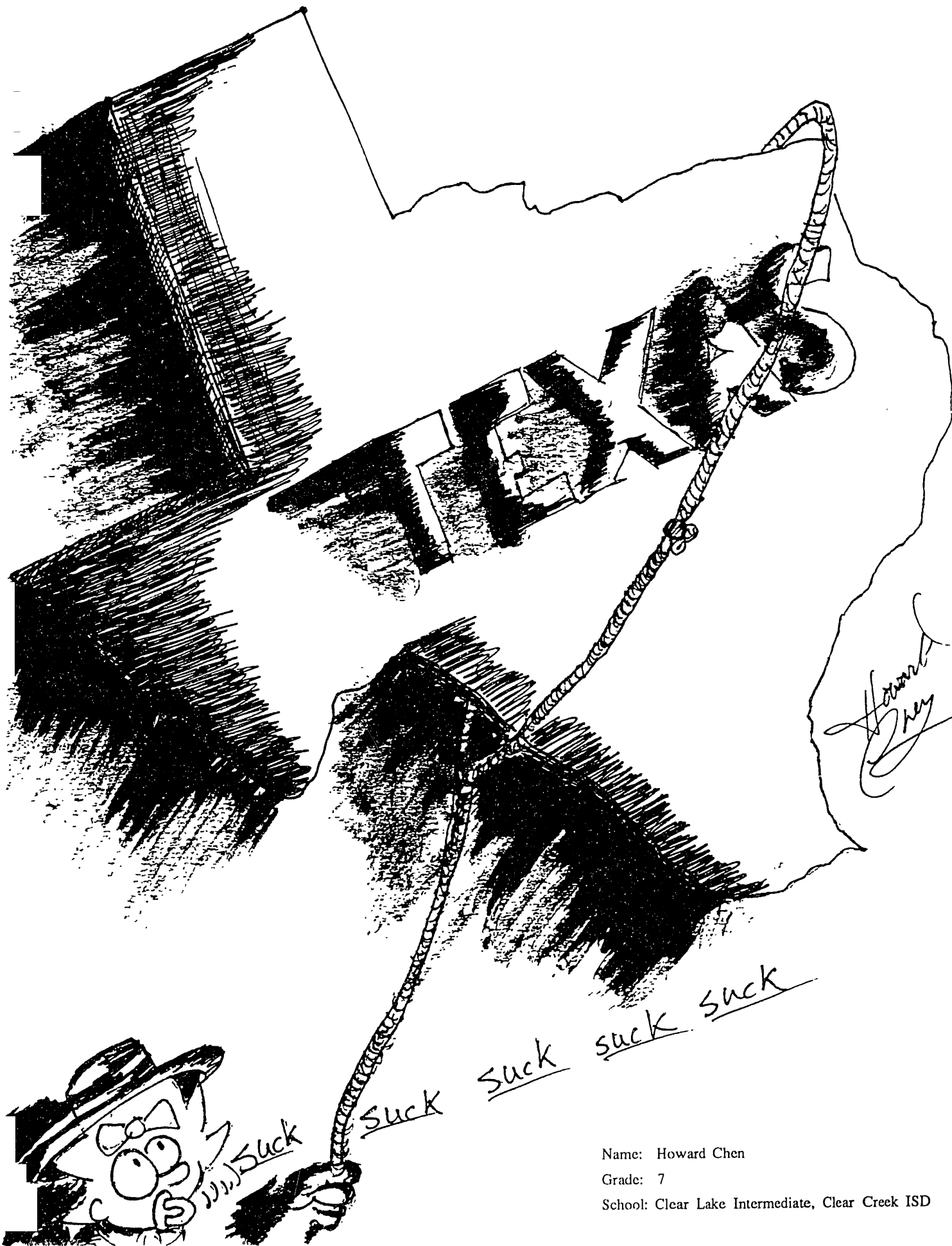
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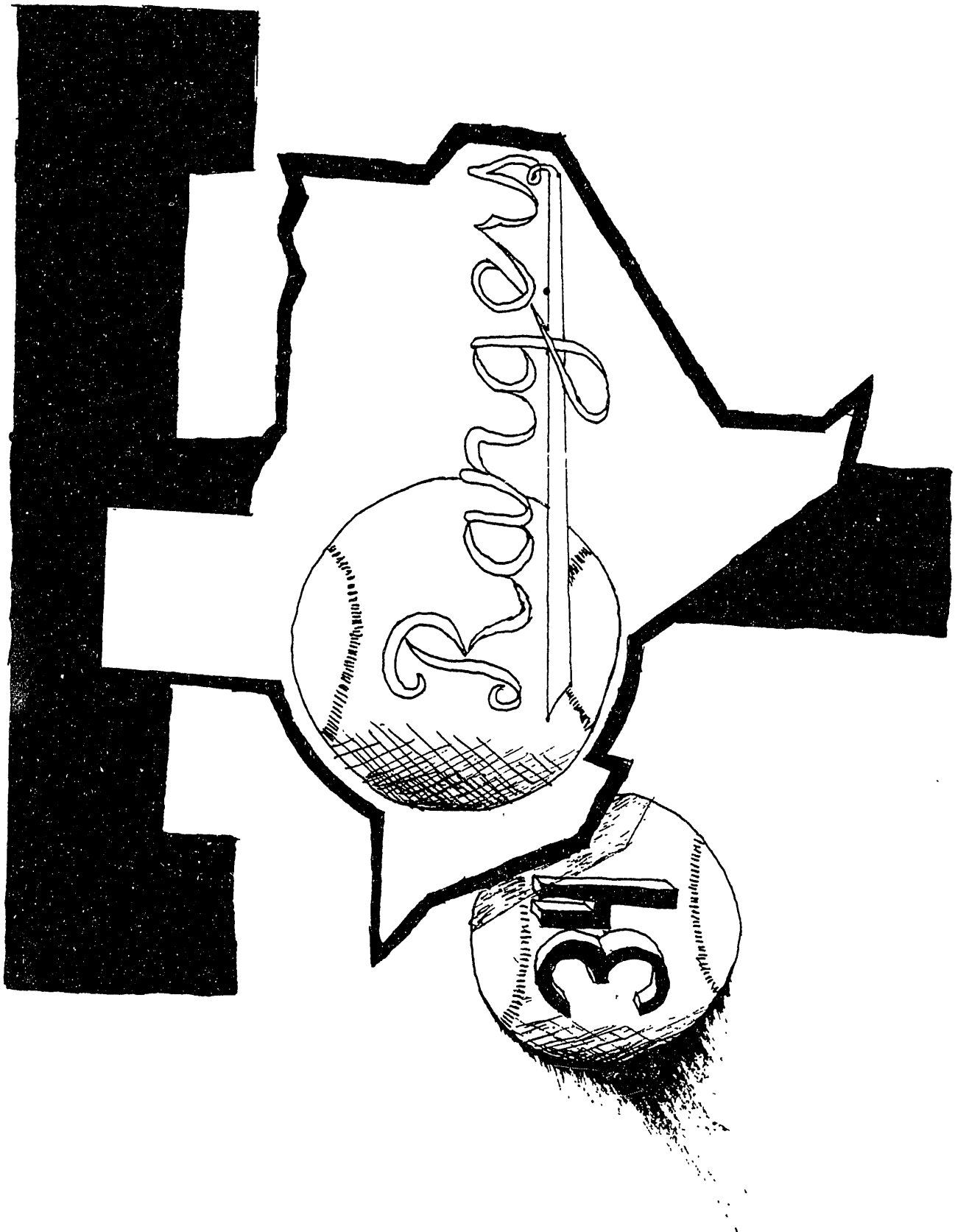
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Grade: 7

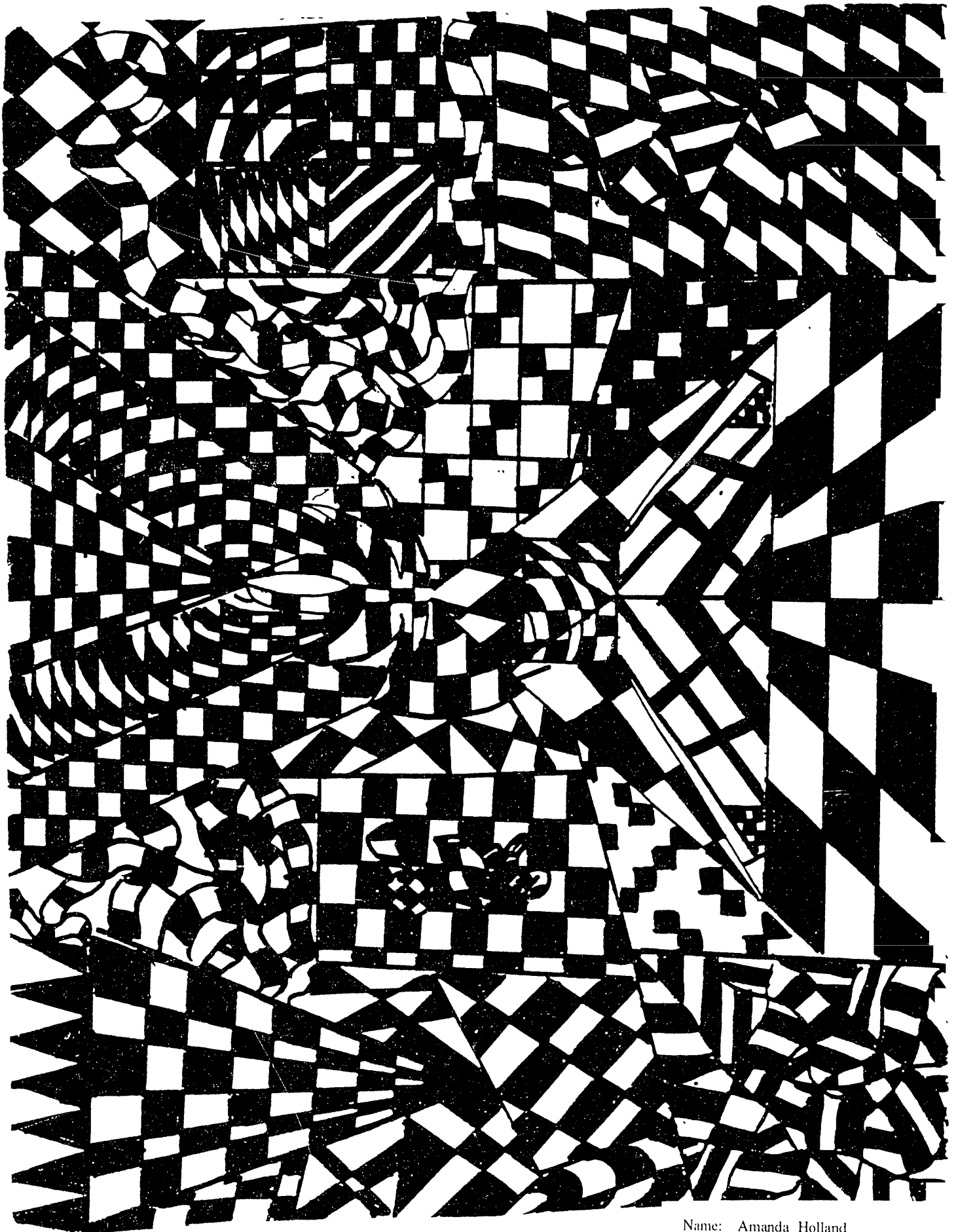
School: Clear Lake Intermediate, Clear Creek ISD



Name: Steven Myrick

Grade: 7

School: Clear Lake Intermediate, Clear Creek ISD



Name: Amanda Holland
Grade 5
School: Hedgecove Elementary Plano ISD

Emergency Sections

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 5. Campaign Financing

Subchapter B. Reporting Forms Candidate/Officeholder Sworn Report of Contributions and Expenditures

• 1 TAC §5.11

The Texas Ethics Commission adopts on an emergency basis new §5.11 concerning the form for reporting contributions and expenditures by a candidate/officeholder

The Texas Ethics Commission has determined that the emergency adoption of the new section is necessary and in the public interest in order to comply with Title 15, Texas Election Code, §§254.036, 254.063, 254.064, 254.065, 254.093, and 254.095, as amended by Senate Bill 1 of the 72nd Regular Session of the Texas Legislature, effective date January 1, 1992.

The commission finds that an emergency exists in that Title 15, Texas Election Code, has been amended effective January 1, 1992. The amendment requires certain information to be filed

The Texas Constitution, Article III, §24a, created the Texas Ethics Commission and gives the commission such powers and duties as the legislature may provide. The legislature has enacted Texas Civil Statutes, Article 6252-9d 1, effective January 1, 1992, which confers on the commission the power to ad-

minister and enforce Title 15, Texas Election Code, and the power to prescribe forms for reports.

The Texas Ethics Commission adopts the new section on an emergency basis under Texas Civil Statutes, Article 6252-9d.1, §1.11(b)(9), which confers upon the commission the authority to adopt rules.

§5.11. Candidate/Officeholder Sworn Report of Contributions and Expenditures. The Texas Ethics Commission adopts the Candidate/Officeholder Sworn Report of Contributions and Expenditures Form prescribed by the commission on January 13, 1992, as follows. This form is available from the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

T15 920001
 TEXAS ETHICS COMMISSION
 P.O. Box 12070
 Austin, TX 78711-2070
 1/92
 Part X-01

USE ONLY BLACK INK
 OR BLACK TYPEWRITER RIBBON
 WHEN FILLING OUT THIS FORM

FOR OFFICE USE ONLY

File # _____

Please complete:
 Total pages in this report: _____
 Total pages of contributions only: _____

**CANDIDATE/OFFICEHOLDER
 SWORN REPORT OF
 CONTRIBUTIONS AND EXPENDITURES**
 (Title 15, Texas Election Code)

PM	HD
----	----

Full name of candidate or officeholder	Address of candidate or officeholder	
Office held ¹	Office sought ²	
Name of campaign treasurer ³	Residence or business street address of campaign treasurer	
Telephone number of campaign treasurer ()	Date of election, if applicable	Type of election, if applicable

For the period _____, 19____, through _____, 19_____.

Type of report (check the appropriate selection):

- _____ 30th day before an election ^{4,5}
- _____ 8th day before an election ^{4,6}
- _____ 8th day before a runoff ^{4,7}
- _____ July 15 ⁸
- _____ January 15 ⁹
- _____ Final report (attach Part X-08) ¹⁰
- _____ 48 hr. report required by modified reporting procedure (Sec. 254.183(b), Texas Election Code) ¹¹

- _____ 15th day after appointment of campaign treasurer by an officeholder ¹²
 - _____ Annual report of unexpended contributions ¹³
- (Complete the following information:)
- a) Total of unexpended political contributions as of December 31: \$ _____
 - b) Amount of interest or other income earned during calendar year: \$ _____
- _____ Amended report ¹⁴

 (Specify type of report you are amending)

COMPLETE THE FOLLOWING, if applicable: I have been notified by the following that they accept political contributions or they make political expenditures for me. (Tex. Elec. Code Ann. secs. 254.061(3), (4); 254.091(2).) Attach additional pages if necessary.	
Full name and address of political committee. State whether the committee is a general-purpose (GP) or specific-purpose (SP) committee.	Full name and address of the committee's campaign treasurer

If no reportable activity occurred during this reporting period, indicate that fact below; you may then proceed to Part X-07 and complete the affidavit. If activity occurred, continue with Parts X-02, X-03, X-04, X-05, X-06, and X-07.

_____ NO REPORTABLE ACTIVITY OCCURRED DURING THIS REPORTING PERIOD.

See Reverse Side for Footnotes and Instructions

FOOTNOTES

1. If you are a current officeholder, complete this section.
2. If you are a candidate, complete this section.
3. Officeholders are not required to have a campaign treasurer in order to accept officeholder contributions or to make officeholder expenditures. (Tex. Elec. Code Ann. secs. 253.036, 253.031, 252.001)
4. This report is filed by a candidate who has an opponent whose name is to appear on the ballot, by a write-in candidate whose opponent's name is to appear on the ballot, and by an opposed candidate who withdrew his candidacy after becoming a candidate. (Tex. Elec. Code Ann. secs. 254.064, 251.001(1)) This report is not filed by those opposed candidates who have properly declared their intent to follow the modified reporting procedure and who have not exceeded the \$500 maximum. (Tex. Elec. Code Ann. sec. 254.184)
5. This report covers the period beginning on the day of campaign treasurer appointment or the first day after the period covered by the last required report, as applicable, and continuing through the 40th day before the election. (Tex. Elec. Code Ann. sec. 254.064(b))
6. This report covers the period beginning on the 39th day before election day and continuing through the 10th day before the election. (Tex. Elec. Code Ann. sec. 254.064(c))
7. This report covers the period from the ninth day before the date of the main election and continuing through the 10th day before the runoff election. (Tex. Elec. Code Ann. sec. 254.064(e))
8. The July 15 semiannual report is required to be filed by every candidate and all but certain local officeholders. (If local officeholder, see Instructional Note below.) This report covers the period beginning January 1, the day of the appointment of campaign treasurer, or the first day after the period covered by the last required report, as applicable, and continuing through June 30. (Tex. Elec. Code Ann. secs. 254.063(b), 254.093(b))
9. The January 15 semiannual report is required to be filed by every candidate and all but certain local officeholders. (If local officeholder, see Instructional Note below.) This report covers the period beginning July 1, the day of the appointment of campaign treasurer, or the first day after the period covered by the last required report, as applicable, and continuing through December 31. (Tex. Elec. Code Ann. secs. 254.063(c), 254.093(c))
10. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a required report, the candidate may designate the report as a "final" report by attaching Part X-08. The designation of a report as a final report relieves the candidate of the duty to file additional reports as a candidate and terminates the candidate's campaign treasurer appointment. However, if, after a candidate's final report is filed, reportable activity with respect to the candidacy occurs, the candidate shall file the appropriate regularly required reports and is otherwise subject to the provision of Title 15. A subsequent required report may be designated as a final report. (Tex. Elec. Code Ann. sec. 254.065) Note that a candidate who files a "final" report may still be required to file reports if: (1) the candidate retains unexpended contributions; or (2) the candidate is also an officeholder.
11. This report is filed by candidates who have opted for the modified reporting procedure but have exceeded the \$500 maximum after the filing deadline for the first report required by sec. 254.064. This report must be filed not later than 48 hours after the maximum is exceeded. The report covers the period beginning the day of the campaign treasurer appointment and continuing through the day the maximum is exceeded. A candidate who exceeds the \$500 maximum is also required to file reports as required by sec. 254.064. The reporting period for the next report filed by the candidate begins on the day after the last day of the period covered by the report filed within 48 hours. (Tex. Elec. Code Ann. sec. 254.183)
12. This statement must be filed by an officeholder who appoints a campaign treasurer. (If local officeholder, see Instructional Note below.) This report covers the period beginning the first day after the end of the period covered by the last required report and continuing through the day before the date the campaign treasurer is appointed. (Tex. Elec. Code Ann. sec. 254.094)
13. The annual report of unexpended contributions is required to be filed by a former officeholder or a former unsuccessful candidate who has unexpended political contributions. The report must be filed between January 1 and January 15 and covers the period beginning the first day after the end of the period covered by the last required report and continuing through December 31 of the preceding year. (Tex. Elec. Code Ann. secs. 254.201, 254.202)
14. The filing of an amended report is an administrative procedure that may be used to correct a deficiency on a previously filed report. The filing of an amended report does not relieve the person responsible for filing the report of any criminal penalties or civil liabilities that may arise under the Act.

INSTRUCTIONAL NOTES

REPORT NOT REQUIRED BY CERTAIN LOCAL OFFICEHOLDERS. If at the end of the reporting period for a semiannual officeholder report or a report due 15 days after filing a campaign treasurer appointment, an officeholder who is required to file Title 15 reports with an authority other than the Texas Ethics Commission has not accepted political contributions that in the aggregate exceed \$500 or made political expenditures that in the aggregate exceed \$500, the officeholder is not required to file a report covering that period. NOTE: This exemption only applies to those reports required to be filed as a result of officeholder status; if the local officeholder is also a candidate under Title 15, he must still file semiannual reports and otherwise comply with the filing requirements placed on candidates.

FILING DEADLINE. The deadline for filing a report, other than the 48-hour report filed by candidates under the modified procedure and the special telegram reports filed by legislative candidates, is 5 p.m. on the last day permitted for filing the report. (Tex. Elec. Code Ann. sec. 254.037) Such report is timely filed if it is hand-delivered to the appropriate authority or placed in first-class mail with the U.S. Post Office or with a common or contract carrier, properly addressed and with postage or handling charges prepaid, before the filing deadline. (Tex. Elec. Code Ann. sec. 251.007) If a report required to be filed with the Texas Ethics Commission is determined to be late, the person required to file the report is civilly liable to the state for a late penalty to be set by the commission. (Tex. Elec. Code Ann. sec. 254.042)

STATEWIDE OFFICEHOLDERS AND MEMBERS OF THE LEGISLATURE. You may not accept a political contribution during the period beginning on the 30th day before the date of a regular legislative session convenes and continuing through the day of final adjournment. If a political contribution is received during that period, it must be returned within 30 days. A contribution mailed prior to the beginning of the period may be accepted. Report the date of the mailing as the date of the contribution. (Tex. Elec. Code Ann. sec. 253.034(b))

INSTRUCTIONS

List all political contributions (whether for campaign or officeholder purposes) aggregating more than \$50 from any one person (or group) during this reporting period, the date, and the full name and complete address of each contributor. (Tex. Elec. Code Ann. secs. 254.031(a)(1), 254.062)

In Column (2) give the market value of a gift of property or services and the rental value of the use of property if the value is more than \$50. If the gift of property or services is classified as unique so that the market value cannot be ascertained, show the estimated market value.

A political contribution consisting of an individual's personal service or personal travel expense incurred by an individual is not required to be reported if the individual receives no compensation or reimbursement for the service or expense. (Tex. Elec. Code Ann. secs. 254.032, 254.033)

Note that contributions aggregating \$50 or less from any one person (or group) during this reporting period may also be listed individually on Part X-02. If they are not individually listed, the total amount of all such contributions must be disclosed on line 4, Part X-07 of this form. (Tex. Elec. Code Ann. sec. 254.031(a)(5))

A contribution received but not accepted is not required to be reported but must be returned to the contributor not later than the 30th day after the deadline for filing the report that covers the period during which the contribution is received. If the determination to accept or refuse the contribution is not made by the end of the reporting period, the contribution is considered accepted and must be reported. (Tex. Elec. Code Ann. sec. 254.034)

A candidate or officeholder may not maintain officeholder contributions accepted by that person in an account separate from campaign contributions accepted by that person. (Tex. Elec. Code Ann. sec. 253.040) This prohibition requires an officeholder to deposit any officeholder contributions in an account that also contains campaign contributions. It does not require all campaign contributions and officeholder contributions to be combined in one bank account.

LIMITATION ON CONTRIBUTIONS FROM OUT-OF-STATE COMMITTEES

(Tex. Elec. Code Ann. sec. 253.032)

CONTRIBUTIONS TOTALING MORE THAN \$500. In a reporting period, the candidate or officeholder may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless the candidate or officeholder receives from the out-of-state committee:

(1) a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by the commission.

The candidate or officeholder must include this statement of contributors or copy of the committee's federal statement of organization with the report that covers the applicable reporting period.

CONTRIBUTIONS TOTALING \$500 OR LESS. If the candidate or officeholder accepts political contributions totaling \$500 or less from an out-of-state political committee, he or she must include as part of the report that covers the reporting period in which the contribution is accepted:

(1) the name, address, and telephone number of the out-of-state political committee's campaign treasurer and the name of the person who appointed the campaign treasurer; the full name, and any acronym of the name that will be used in the name of the committee, of each corporation or other organization that administers or controls the committee, if applicable, or the name of each person who determines to whom the committee makes contributions or who determines for what purposes the committee makes expenditures; the name and address of each general-purpose committee to whom the committee intends to make political contributions; and, if the name of the committee is an acronym, the words the acronym represent; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by the commission.

If more space is needed, please reproduce this form. Please do not write outside of the border.

INSTRUCTIONS

For each loan that in the aggregate exceeds \$50 during the reporting period, give the full name of each person, other than a financial institution, making the loan; the full name and complete address of each guarantor of the loan, the principal occupation of each guarantor, and the name of the guarantor's employer; the amount of the loan guaranteed by each guarantor; interest rate; maturity date; type of collateral for the loan; and the date of the loan. (Tex. Elec. Code Ann. sec. 254.031(2))

The full name and complete address of any individual or person, other than a financial institution, making the loan for candidate or officeholder purposes should be reported in Column 1.

The full name and complete address of each guarantor, if any, the guarantor's principal occupation, and the name of the guarantor's employer should be reported in Column 1.

A description of the collateral securing the loan should be reported in Column 2.

The date the loan was made should be reported in Column 3.

The maturity date of the loan should be reported in Column 4.

The interest rate of the loan should be reported in Column 5.

The amount of the loan (not including interest) should be reported in Column 6.

That amount of the loan guaranteed by a guarantor, if any, should be reported in Column 7.

Note that loans aggregating \$50 or less from any one person (or group or other entity), other than from a financial institution, made during this reporting period may also be listed individually on Part X-03. If they are not individually listed, the total amount of all such loans must be disclosed on line 4, Part X-07 of this form. (Tex. Elec. Code Ann. sec. 254.031(a)(5))

If more space is needed, simply reproduce this form. Please do not write outside of the border.

USE ONLY BLACK INK OR BLACK TYPEWRITER
RIBBON WHEN FILLING OUT THIS FORM

Complete: Pg. _____ of _____

**CANDIDATE/OFFICEHOLDER LOANS
FROM FINANCIAL INSTITUTIONS**

Name of candidate/officeholder:						
(1) Full name and complete address of financial institution making the loan	(2) Description of collateral (if any)	(3) Date of loan	(4) Maturity date of loan	(5) Interest rate	(6) Amount of loan	(7) Amount of loan guaranteed by guarantor
1. Full name and complete address of financial institution making the loan						
2. Full name and complete address of guarantor, guarantor's principal occupation, and name of guarantor's employer (if applicable)						
TOTAL						

See Reverse Side for Instructions

INSTRUCTIONS

For each loan that in the aggregate exceeds \$50 during the reporting period, give the full name of each financial institution making the loan; the full name and complete address of each guarantor of the loan, the principal occupation of each guarantor, and the name of the guarantor's employer; the amount of the loan guaranteed by each guarantor; interest rate; maturity date; type of collateral for the loan; and the date of the loan. (Tex. Elec. Code Ann. sec. 254.031(2))

The full name of the financial institution (legally engaged in such business for more than one year) making the loan for candidate or officeholder purposes should be reported in Column 1.

The full name and complete address of each guarantor, if any, the guarantor's principal occupation, and the name of the guarantor's employer should be reported in Column 1.

A description of the collateral securing the loan should be reported in Column 2.

The date the loan was made should be reported in Column 3.

The maturity date of the loan should be reported in Column 4.

The interest rate of the loan should be reported in Column 5.

The amount of the loan (not including interest) should be reported in Column 6.

That amount of the loan guaranteed by a guarantor, if any, should be reported in Column 7.

If more space is needed, simply reproduce this form. Please do not write outside of the border.

**CANDIDATE/OFFICEHOLDER
EXPENDITURES AND PAYMENTS**

Name of candidate/officeholder:

Date	Payee or creditor Full name, complete address	Purpose of expenditure or payment (see instructions)	(a) Check () this column if payment was from personal funds	(b) Check () this column if you expect to be reim- bursed from political contributions	Enter the amount of the expenditure or payment in the appropriate column		
					(1) Disburse- ments of cash or property and unpaid bills (except loans) not previously reported	(2) Repayments of loans of money	(3) Payments that were not political expendi- tures* (Tex. Elec. Code Ann. sec. 254.031(a)(4))
TOTAL							

* "Payments that were not political expenditures" are payments that were not involved in an election or in the performance of officeholder duties or activities but were made from political contributions.

See Reverse Side for Instructions

INSTRUCTIONS

List all expenditures (whether for campaign or officeholder purposes) aggregating more than \$50 to any one person (or group) during this reporting period. Give the full name and address of the person to whom the expenditure was made and the date, amount, and purpose of the expenditure. (Tex. Elec. Code Ann. sec. 254.031(a)(3))

NOTE: if a candidate or officeholder is receiving the benefits of a direct campaign expenditure, list under the "Purpose of Expenditure or Payment" column the name of the candidate or officeholder who is receiving the benefit of the expenditure, and the office sought or held. (Tex. Elec. Code Ann. sec. 254.031(a)(7))

List the full name and address of each person to whom any payment that is not a political expenditure was made, if the payment was made from a contribution, and the date, amount, and purpose of the payment. (Tex. Elec. Code Ann. sec. 251.031(a)(4))

Please enter a check mark in Column (a) if the expenditure or payment was made from your personal funds.

Please enter a check mark in Column (b) if the expenditure or payment was made from personal funds and you expect to be reimbursed from political contributions.

NOTE: a candidate or officeholder who makes political expenditures from his/her personal funds may reimburse his/her personal funds from political contributions only if those expenditures are fully reported as political expenditures during the period covered by the report, and those expenditures are disclosed as having been made from the person's personal funds, and that the expenditures are subject to reimbursement. (Tex. Elec. Code Ann. sec. 253.035(h))

A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution to purchase real property or to pay the interest on or principal of a note for the purchase of real property. (Tex. Elec. Code Ann. sec. 253.038(a))

Expenditures aggregating \$50 or less to any one person (or group) during this reporting period may be listed individually on Part X-05 or the total amount of all such expenditures must be disclosed on line 9, Part X-07 of this form. (Tex. Elec. Code Ann. sec. 254.031(a)(5))

An expenditure need not be considered to have been made until the amount is readily determinable or until the date of receipt of the periodic bill, if normal business practice is such that the amount is not disclosed until the date the next periodic bill is received (Tex. Elec. Code Ann. sec. 254.035)

If more space is needed, simply reproduce this form. Please do not write outside the border.

**CANDIDATE/OFFICEHOLDER
EXPENDITURES AND PAYMENTS TO A
BUSINESS OF THE CANDIDATE/OFFICEHOLDER**

Name of candidate/officeholder:

Date	Name and address of business in which candidate/officeholder has a participating interest of more than 10%, holds a position on the governing body, or serves as an officer of the business	Amount of payment from contributions
TOTAL		

See Reverse Side for Instructions

INSTRUCTIONS

Identify any payment from political contributions made to each business in which the candidate/officeholder serves as an officer and/or holds a position on the governing board, and/or in which the candidate/officeholder has a participating interest of more than ten percent (10%). (Tex. Elec. Code Ann. secs. 254.061(5), 254.091(3))

These payments must also be disclosed on Part X-05, Candidate/Officeholder Expenditures and Payments.

NOTE: Sec. 253.041 Texas Election Code. RESTRICTIONS ON CERTAIN PAYMENTS. (a) A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to: (1) a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; or (2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder. (b) A payment that is made from a political contribution to a business described by Subsection (a) and that is not prohibited by that subsection may not exceed the amount necessary to reimburse the business for the actual expenditures made by the business. (c) A person who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

**CANDIDATE/OFFICEHOLDER
CONTRIBUTIONS AND EXPENDITURES TOTALS**

Name of candidate/officeholder: _____

TOTALS

Contributions		Expenditures	
1. Total from Column 1, Part X-02 (money or equivalent)	\$ _____	7. Total from Column 1, Part X-05 (disbursements of cash or property and unpaid bills, except loans)	\$ _____
2. Total from Column 2, Part X-02 (market value of gifts, services, use of property)	\$ _____	8. Total from Column 2, Part X-05 (repayments of loans of money)	\$ _____
3. Total from Column 6, Part X-03 (total amount of loans from persons other than financial institutions)	\$ _____	9. Total political expenditures of \$50 and less, unless itemized	\$ _____
4. Total contributions of \$50 and less, unless itemized, (include money, gifts, services, use of property and loans of money from persons other than financial institutions)	\$ _____	10. Total political expenditures for this reporting period (add lines 7, 8, and 9)	\$ _____
5. Total contributions for this reporting period (add lines 1, 2, 3, and 4)	\$ _____	11. Total from Column 3, Part X-05 (payments that were not political expenditures) (optional)	\$ _____
6. Total principal amount of loans excluding interest	\$ _____		

AFFIDAVIT ²

State of Texas, County of _____

Before me, the undersigned authority, on this day personally appeared _____
who being known by me here and now duly sworn, upon oath says: "I swear or affirm that the accompanying report is true and correct
and includes all information required to be reported by me under Title 15, Election Code."

TREASURER OF CANDIDATE IS NOT
AUTHORIZED TO SIGN

Signature of candidate or officeholder

Sworn to and subscribed before me, by the said _____, this _____ day of

_____, 19____, to certify which, witness my hand and seal of office.

See Reverse Side for Instructions

Signature of officer administering oath

Print name of officer administering oath

Print title of officer administering oath
(as listed in footnote 3 on back)

FOOTNOTE

1. Candidates and officeholders must report the aggregate principal amount of all outstanding loans as of the last day of the reporting period. (Tex. Elec. Code Ann. sec. 254.031(a)(2))
2. This report must contain a properly executed oath. (Tex. Elec. Code Ann. sec. 254.036) An unsworn report filed with the Texas Ethics Commission does not satisfy the requirement to timely file a sworn report for purposes of Section 254.042; a civil penalty to be set by the commission will be assessed for a late report.
3. The following are some of the persons that may administer oaths, affidavits, or affirmations made within this state:
 - a. a judge, clerk, or commissioner of any court of record;
 - b. a notary public;
 - c. a justice of the peace; and
 - d. any member of any board or commission created by the laws of this state, in matters pertaining to the duties thereof.

See Tex. Rev. Civ. Stat. Ann. art. 26 (Vernon Supp. 1992)

Issued in Austin, Texas, on January 24, 1992.

TRD-9201155

Jim Mathieson
Staff Attorney
Texas Ethics Commission

Effective date: January 24, 1992

Expiration date: May 23, 1992

For further information, please call: (512)
406-0100

◆ ◆ ◆
**Notice of Intent to File
Monthly Sworn Reports of
Contributions and Expendi-
tures or Notice of Intent to
Revert to the Regular Filing
Schedule**

• **1 TAC §5.12**

The Texas Ethics Commission adopts on an emergency basis new §5.12 concerning the

form for reporting the notice of intent to file monthly sworn reports of contributions and expenditures or notice of intent to revert to the regular filing schedule by general-purpose committees.

The Texas Ethics Commission has determined that the emergency adoption of the new section is necessary and in the public interest in order to comply with Title 15, Texas Election Code, as amended by Senate Bill 1 of the 72nd Regular Session of the Texas Legislature, effective date January 1, 1992.

The commission finds that an emergency exists in that Title 15, Texas Election Code, has been amended effective January 1, 1992. The amendment requires certain information to be filed.

The Texas Constitution, Article III, §24a, created the Texas Ethics Commission and gives the commission such powers and duties as the legislature may provide. The legislature has enacted Texas Civil Statutes, Article 6252-9d.1, effective January 1, 1992, which

confers on the commission the power to administer and enforce Title 15, Texas Election Code, and the power to prescribe forms for reports.

The Texas Ethics Commission adopts the new section on an emergency basis under Texas Civil Statutes, Article 6252-9d.1, §1.11(b)(9), which confers upon the commission the authority to adopt rules.

§5.12. Notice of Intent to File Monthly Sworn Reports of Contributions and Expenditures or Intent to Revert to the Regular Filing Schedule. The Texas Ethics Commission adopts the Notice of Intent to File Monthly Sworn Reports of Contributions and Expenditures or Intent to revert to the Regular Filing Schedule Form prescribed by the commission on January 13, 1992, as follows. This form is available from the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

Use only black print
when completing this
form

FOR OFFICE USE ONLY

File# _____

**NOTICE OF INTENT TO FILE
MONTHLY SWORN REPORTS
OF CONTRIBUTIONS AND EXPENDITURES
OR
NOTICE OF INTENT TO REVERT
TO THE REGULAR FILING SCHEDULE
(Title 15, Texas Election Code)**

PM

HD

Name of General-Purpose Committee

Name of Committee's Campaign Treasurer

The committee hereby gives notice of intent to file reports as follows:

Method of Filing (Check one): Monthly Reports. (filed pursuant to Tex. Elec. Code Ann. sec. 254.155)

Contributions, expenditures, and loans in an aggregate amount of more than \$10.00 require detailed disclosure.

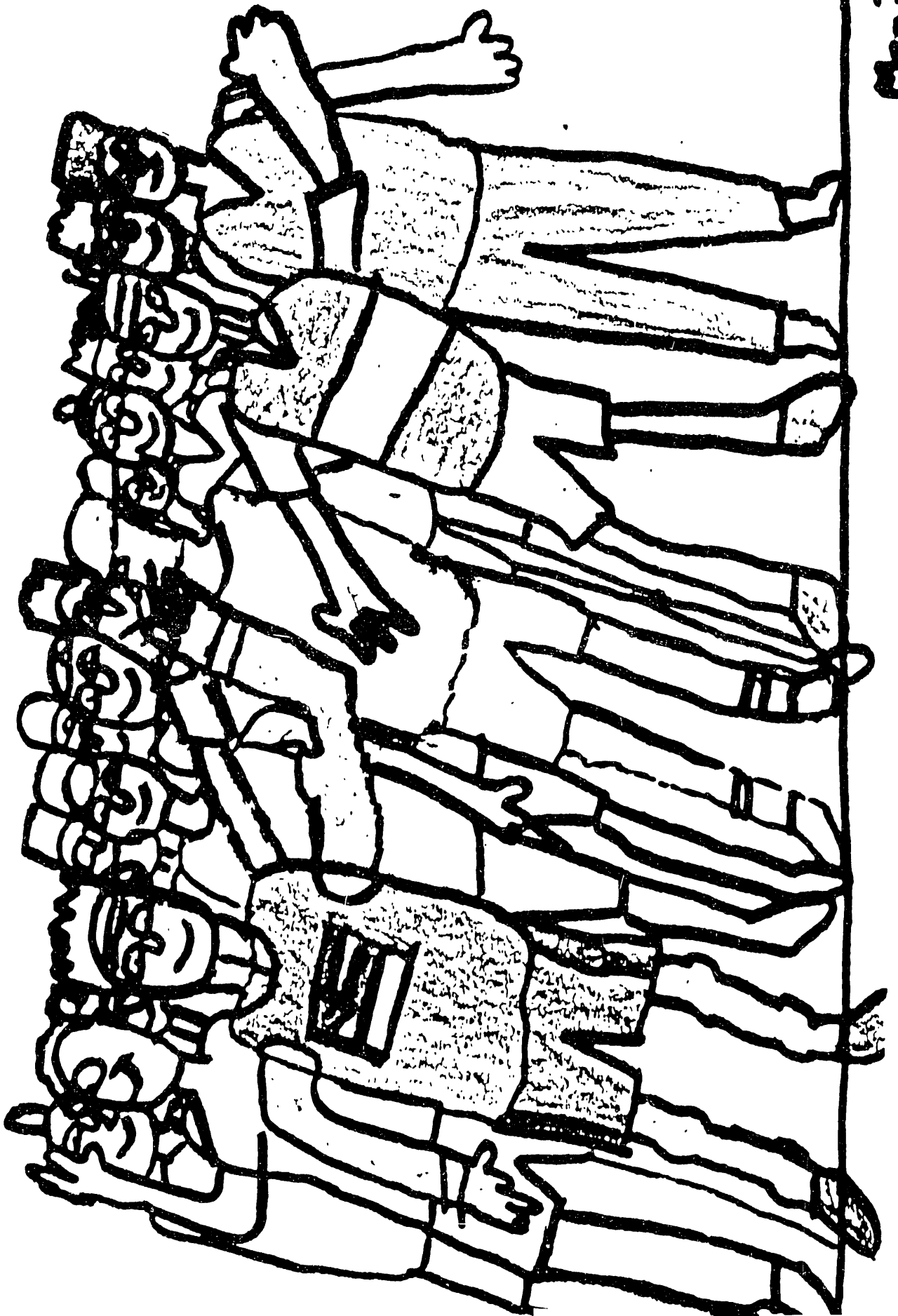
Reports required by regular filing schedule. (filed pursuant to Tex. Elec. Code Ann. secs. 254.153 and 254.154)

Contributions, expenditures, and loans in an aggregate amount of more than \$50.00 require detailed disclosure.

Signature of Campaign Treasurer or Assistant Campaign Treasurer

INSTRUCTIONAL NOTES

A Notice of Intent to File Monthly may only be filed with the Texas Ethics Commission between January 1 and January 15 of the year in which the committee intends to file monthly reports, except that a general-purpose committee which is formed after January 15 of any particular year may file a Notice of Intent at the same time it files its appointment of campaign treasurer. Once a general-purpose committee has filed a Notice of Intent to File Monthly, it must continue with this filing procedure until a Notice of Intent to Revert is filed. In order for any general-purpose committee filing monthly reports to revert to filing the reports required by the regular filing schedule, a Notice of Intent to revert must be filed between January 1 and January 15.



Name: Monica Traphagan

Grade: 3

School: Lake Highlands Elementary, Richardson ISD

Issued in Austin, Texas, on January 24, 1992.

TRD-9201151

Jim Mathieson
Staff Attorney
Texas Ethics Commission

Effective date: January 24, 1992

Expiration date: May 23, 1992

For further information, please call: (512)
406-0100



Chapter 10. Registration and Regulation of Lobbyists

Lobbyist Termination Notice

• 1 TAC §10.35

The Texas Ethics Commission adopts on an emergency basis new §10.35 concerning the form "Lobbyist Termination Notice."

The Texas Ethics Commission has determined that the emergency adoption of the new section is necessary and in the public interest in order to comply with Texas Civil Statutes, Article 6252-9d.1, and Chapter 305, Texas Government Code.

The commission finds that an emergency exists in that the Texas Government Code, Chapter 305 requires that certain information be filed with the commission after January 1, 1992, and that it be done when a lobbyist ceases lobby activities.

The Texas Constitution, Article III, §24a, created the Texas Ethics Commission and gives the commission such powers and duties as the legislature may provide. The legislature has enacted Texas Civil Statutes, Article 6252-9d.1, effective January 1, 1992, which confers on the commission the power to administer and enforce Chapter 305, Texas Government Code, and the power to prescribe forms for reports.

The Texas Ethics Commission adopts the new section on an emergency basis under Texas Civil Statutes, Article 6252-9d.1, §1.11(b)(9), which confers upon the commission the authority to adopt rules.

§10.35. Lobbyist Termination Notice. The Texas Ethics Commission adopts the Lobbyist Termination Notice Form prescribed by the commission on January 13, 1992, as follows. This form is available from the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070.

305 920003
Texas Ethics Commission
P.O. Box 12070
Austin, Texas 78711-2070
1/92

FOR OFFICE USE ONLY	
File # _____	
PM	HD

LOBBYIST TERMINATION NOTICE^{1,2}
(Texas Government Code section 305.008)

I, _____, a registrant under Chapter 305 of the Texas Government Code, hereby state as of the filing of this notice I have ceased to engage in all activities requiring registration under Chapter 305. I acknowledge that I must file a report for any periods during which I was registered and for which I have not already filed reports.

VERIFICATION

I do solemnly swear or affirm that the foregoing Lobbyist Termination Notice is in all things true and correct.

Signature of Registrant

Sworn or affirmed to and subscribed before me by _____, this the _____ day of _____, 19 _____, to certify which, witness my hand and seal.

Signature of officer administering oath³

Print name of officer administering oath

Title of officer administering oath

See Reverse Side for Footnotes.

FOOTNOTES

1. This termination notice must be filed only when a registrant ceases lobby activity requiring registration for all of the registrant's employers. The filing of this form means the registrant has ceased ALL activity that requires Chapter 305 registration.

A registrant should not file this termination notice if the registrant ceases activity for one or more employers but will continue to lobby on behalf of others. When a lobbyist ceases to lobby for one or more, but less than all, of his employers, the registrant must simply file the Lobbyist Activity Report with the necessary amendments checked to reflect that fact. The amended report must be filed by the due date of the next Lobbyist Activity Report. (Tex. Elec. Code Ann. §§ 305.005(k), 305.007)

2. All registrations automatically terminate by operation of law at midnight on December 31 of each year. (Tex. Elec. Code Ann. sec. 305.005(b)) The filing of a lobbyist termination notice is not necessary when a lobbyist's registration automatically expires pursuant to section 305.005(b).
3. Examples of persons who are authorized to administer oaths, affidavits, or affirmations made within this state: notaries public; justices of the peace; and judges, clerks, and commissioners of courts of record. (Tex. Rev. Civ. Stat. Ann. sec. 26)

Issued in Austin, Texas, on January 24, 1992.

TRD-9201153 Jim Mathieson
Staff Attorney
Texas Ethics Commission

Effective date: January 24, 1992

Expiration date: May 23, 1992

For further information, please call (512) 406-0100

◆ ◆ ◆
**TITLE 31. NATURAL RE-
SOURCES AND CON-
SERVATION**

**Part XIV. Texas Board of
Irrigators**

**Chapter 421. Introductory
Provisions**

General Provisions

The Texas Board of Irrigators adopts on an emergency basis amendments to §§421.1, 421.36, and 421.39, concerning general provisions for the board. The amendments are adopted under Texas Civil Statutes, Article 8751, §7. The amendments are adopted on an emergency basis to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991 and became Texas Civil Statutes, Article 8751. The amendments are proposed in order to define the duties and responsibilities of officers and employees of the board as well as to provide guidelines for maintaining official open records.

Section 421.1 (concerning definitions) defines terms that are used throughout Chapters 421,

423, 425, 427, 429 and 431 of 31 Texas Administrative Code. Section 421.36 (concerning officers and employees) delineates the duties and responsibilities of board officers and employees. Section 421.39(b) (concerning official records) concerns the availability of board records to the public.

• **31 TAC §421.1**

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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

Backflow prevention—The mechanical prevention of reverse flow, or back siphonage, of nonpotable water from an irrigation system into the potable water source.

Hydraulics—The mathematical computation of determining pressure losses and pressure requirements of an irrigation system.

Landscape irrigation—The science of applying water to turf or plant material to promote and/or sustain growth.

Non-toxic substance—Any substance, solid, liquid, or gaseous, which may make the water aesthetically unacceptable but, if ingested, will not cause illness or death.

Precipitation zones—

(A) **Precipitation Zone number 1** is defined as the region of

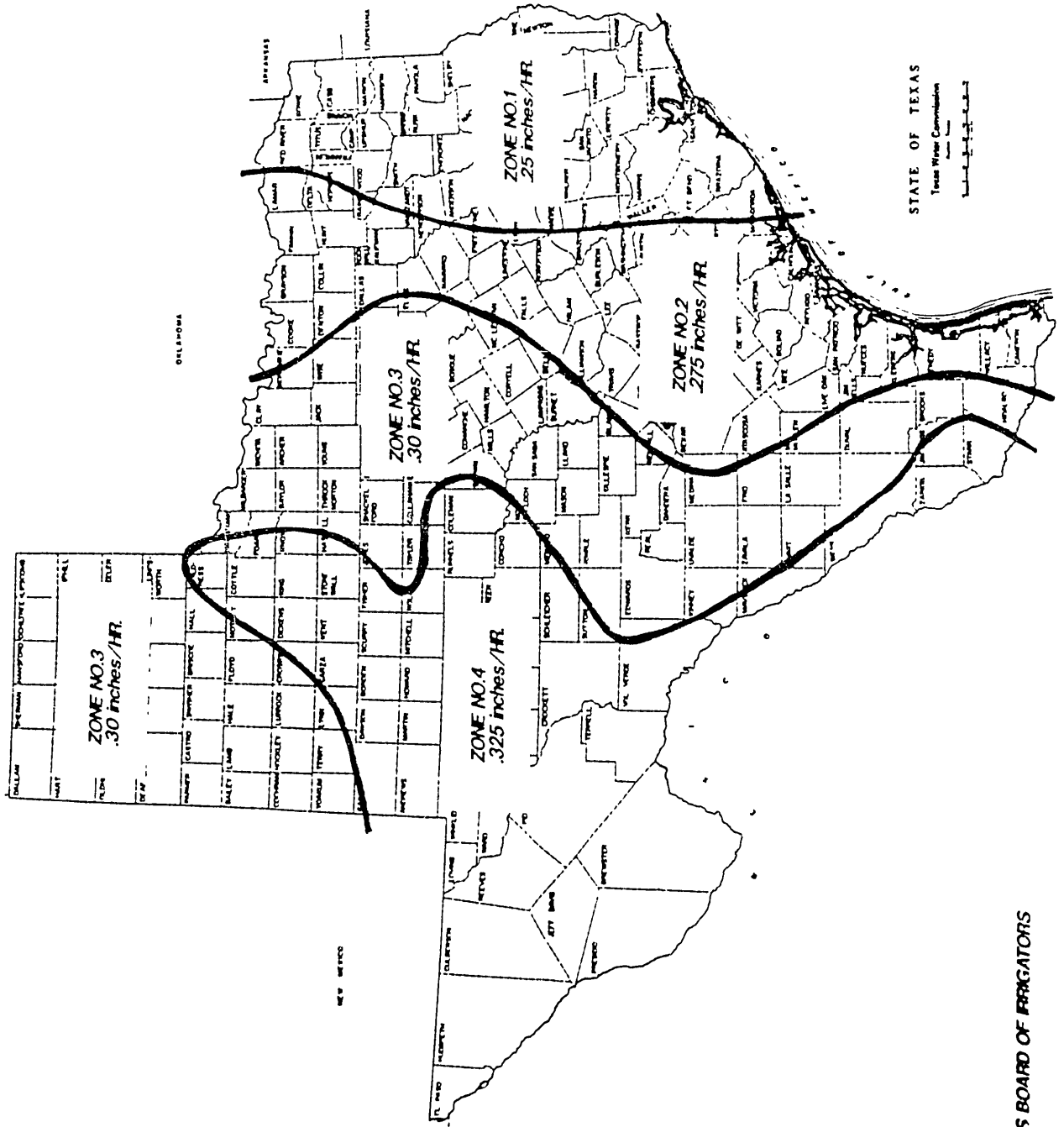
Texas requiring the landscape irrigation system to distribute a minimum of .25 inches of water per hour for every hour that the landscape irrigation system is in operation.

(B) **Precipitation Zone number 2** is defined as the region of Texas requiring the landscape irrigation system to distribute a minimum of .275 inches of water per hour for every hour that the landscape irrigation system is in operation.

(C) **Precipitation Zone number 3** is defined as the region of Texas requiring the landscape irrigation system to distribute a minimum of .30 inches of water per hour for every hour that the landscape irrigation system is in operation.

(D) **Precipitation Zone number 4** is defined as the region of Texas requiring the landscape irrigation system to distribute a minimum of .325 inches of water per hour for every hour that the landscape irrigation system is in operation. The precipitation zones defined in subparagraphs (A)-(D) of this definition are represented as Zones number 1-4 on the following map.

MINIMUM PRECIPITATION RATE FOR LANDSCAPE IRRIGATION SYSTEMS BY ZONE



OCTOBER 1991 TEXAS BOARD OF IRRIGATORS

Toxic substance—Any substance, solid, liquid, or gaseous, which when introduced into the water supply system creates, or may create, a danger to the health and well-being of the consumer.

Water conservation—The design and installation of an irrigation system which applies the least amount of water to maintain health individual plant material or turf.

Issued in Austin, Texas, on January 27, 1992.

TRD-9201196

Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date January 27, 1992

Expiration date May 26, 1992

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

General Provisions Affecting Board

• 31 TAC §421.36, §421.39

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751

§421.36. Officers and Employees.

(a) When present, the chairman shall preside at all meetings, sign all certificates of registration issued, and perform all other duties pertaining to the office. [The board shall elect a chairman who shall hold office for two years and thereafter until his successor has been elected. The chairman may be removed by the board for cause, but his removal does not disqualify him from continuing as a member of the board. When present, the chairman shall preside at all meetings, sign all certificates of registration issued; and perform all other duties pertaining to the office.]

(b) (No change.)

(c) Where there is a vacancy in the office of the vice chairman, the board shall elect a member to fill the vacancy for the remainder of the unexpired term. [Where there is a vacancy in the office of the chairman or vice chairman, the board shall elect a member to fill the vacancy for the remainder of the unexpired term.]

(d) (No change.)

(e) The executive secretary is authorized to request necessary services from the executive director. Such services include, but are not limited to: conducting investigations, holding hearings, and performing other duties and functions in ac-

cordance with Texas Civil Statutes, Article 8751.

§421.39. Official Records.

(a) (No change.)

(b) All records, reports, documents, data, and other information collected by the executive secretary and staff in the performance of enforcement duties are the property of the state. Unless the executive secretary considers information to be confidential and not subject to disclosure in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, or the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, all such records, reports, documents, data and other information collected by the executive secretary shall be made available to the public for inspection and copying during regular office hours. [Subject to the limitations and exceptions provided under the Open Records Act, Texas Civil Statutes, Article 6252-17a, information collected, assembled, or maintained by the board or its executive secretary is public information open to inspection and copying during regular business hours.]

Issued in Austin, Texas, on January 27, 1992.

TRD-9201197

Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date January 27, 1992

Expiration date May 26, 1992

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

Chapter 423. Registration of Irrigators and Installers

Application for Registration

• 31 TAC §§423.1, 423.4, 423.7, 423.10, 423.13, 423.19, 423.22

The Texas Board of Irrigators adopts on an emergency basis amendments to §§423.1, 423.4, 423.7, 423.10, 423.13, 423.19, 423.22, 423.41, 423.50, and 423.56, concerning application for registration to become a licensed irrigator or installer. The amendments are adopted under Texas Civil Statutes, Article 8751, §7. The amendments are adopted on an emergency basis to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991 and became Texas Civil Statutes, Article 8751. The amendments are adopted in order to delineate eligibility requirements and procedures for those applying for certificates of registration.

Section 423.1 (concerning certificate of registration) delineates the eligibility requirements for obtaining an irrigator's or installer's li-

cence. Section 423.4 (concerning application for certificates of registration) dictates who must apply for a certificate of registration and the procedure for obtaining a certificate of registration. Section 423.7 (concerning application and examination fees; form of payment) sets out the amount and form of payment to be paid by an irrigator or installer in applying to take the examination. Section 423.10 (concerning Application Processing) describes the process for applying to take the irrigator's or installer's licensing examination. Section 423.13 (concerning determination of registration by endorsement) defines the board's procedure for registering by endorsement certain irrigators and installers that are licensed in other states. Section 423.19 (concerning rejection of application) provides the conditions under which the board may reject an application for registration. Section 423.22 (concerning hearing on rejected application) dictates the procedures to be taken if a hearing is requested on a rejected application. Section 423.41 (concerning eligibility for written examinations) discusses who is to administer the examination for irrigators and installers to become licensed, and who is eligible to take the aforementioned examination. Section 423.50 (concerning appearance for examination; failure to appear) dictates that an applicant must personally appear to take the examination and failure to appear may result in forfeiture of the examination fee. Section 423.56 (concerning grading; minimum passing score) dictates that to become a licensed irrigator or installer the applicant must correctly answer a minimum of 70% of the questions in each section of the examination.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its power and duties under Texas Civil Statutes, Article 8751

§423.1. Eligibility for Certificates of Registration.

(a) The board shall [may] issue certificates of registration only to persons [individuals] who are eligible for registration as licensed irrigators or licensed installers under Texas Civil Statutes, Article 8751 and these sections. No certificate of registration may be issued to any firm, partnership, corporation, or other group of persons.

(b) No person [individual] is eligible to receive a licensed irrigator's or licensed installer's certificate of registration unless he has applied for it pursuant to these sections and:

(1) the board has determined that the [he is a] person [of good moral character who] has passed a uniform, reasonable examination for irrigators or installers, as applicable, administered by the board in accordance with these sections and Texas Civil Statutes, Article 8751. To pass such examination, a person must satisfactorily demonstrate sufficient pro-

iciency in, but not limited to, the principles of cross connections, safety devices to prevent contamination of potable water supplies, efficient irrigation system design and installation, water conservation, hydraulics, and backflow prevention; or

(2) the board has determined that he is a person registered as the equivalent of a licensed irrigator or licensed installer in another state or country that has requirements for registration or licensing that are substantially equivalent to the requirements of Texas. [and that extends the same privilege of reciprocity to licensed irrigators or licensed installers registered in Texas].

§423.4. Applications for Certificates of Registration.

(a) (No change.)

(b) In addition to submitting his completed application form and application fee, a person [an irrigator or installer] holding the equivalent of a valid licensed irrigator or licensed installer certificate of registration in another state [or country] who wishes to be considered for registration by endorsement in Texas [under reciprocity,] shall arrange for a certified copy of his certification record from the state or country in which he is registered to be directly submitted [submit] to the executive secretary by the foreign registration agency. [his certification record from the state or country in which he is registered.] Obtaining a passing grade on all or any part of the written examination required for registration may be waived by the board on a case-by-case basis for any person holding the equivalent of a valid irrigator's or installer's license or certificate of registration issued by another state that has substantially equivalent requirements as Texas.

(c) (No change.)

§423.7. Application and Examination Fees; Form of Payment. Persons applying for an irrigator's certificate of registration shall remit an application and examination fee of \$75. Persons applying for an installer's certificate of registration shall remit an application and [or] examination fee of \$35. Payments shall be made by personal check, money order, or cashier's check made payable to the Texas Board of Irrigators. These fees shall not be refundable.

§423.10. Application Processing.

(a) (No change.)

(b) Applications for registration by examination may be made at any time but must be accompanied by the examination

fee and received by the executive secretary at least 30 [45] days prior to the applicant's examination date. Applicants shall be responsible for fulfilling all application requirements by this [the] deadline. If the application is complete, the executive secretary shall notify the applicant, so stating, within 10 working days after receipt of the complete application.

(c) The executive secretary [board] shall verify [and evaluate] each submitted application, and if the board or the executive secretary should require additional relevant information, the applicant shall submit such information within the time and in the form requested. The applicant shall be given written notice of any deficiency within 10 working days of receipt of the application.

(d) (No change.)

§423.13. Determination of Application for Registration by Endorsement [under Reciprocity]. The board's approval of an application for registration by endorsement [under reciprocity] shall be given by letter, within 120 [30] days after receipt of said application, which assigns the applicant a registration number. A certificate of registration and identification card shall be issued upon the applicant's compliance with §425.41 of this title (relating to Seal Required) and §425.44 of this title (relating to Seal and Rubber Stamp Facsimile Design) as applicable.

§423.19. Rejection of Application.

[(a)] The board, or the executive secretary on behalf of the board, may reject an application if:

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

[(b)] The board may reject an application if the board finds that the applicant is not of good moral character.]

§423.22. Hearing on Rejected Application.

(a) (No change.)

(b) The applicant must request a hearing in writing within 20 [10] days after the applicant receives his letter of rejection.

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

(e) The board shall render a final decision on the application in an open meeting. [inform the applicant of its final decision on his application by certified mail.] If the final decision is to uphold its rejection of the application, the board shall state in its final order [decision] the reasons and relevant facts for rejection. The final decision or order must be rendered within 60 days after the date the hearing is finally closed.

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Examinations

• 31 TAC §§423.41, 423.50, 423.56

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§423.41. Eligibility for Written Examinations. The board, or any board members, or the executive secretary on behalf of the board shall administer written examinations only to persons [who the board has determined to be of good moral character and] who have completed the required application form and have submitted it and the required examination fee to the executive secretary in accordance with these sections.

§423.50. Appearance for Examination; Failure to Appear. Applicants shall personally appear for the written examination at the designated date, time, and place and be prepared to present sufficient identification. An applicant who fails to appear for an examination shall forfeit the required examination fee except upon written request showing good cause why the applicant failed to appear, as determined by the board or the executive secretary.

§423.56. Grading; Minimum Passing Score. A score of 70% or more on each and every section of the applicable examination is required for registration as a licensed irrigator or licensed installer.

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Chapter 425. Certificate of Registration and Seal

Certificate of Registration

The Texas Board of Irrigators adopts on an emergency basis amendments to §§425.16,

425.19, 425.22, 425.25, and 425.41, concerning certificates of registration. The amendments are adopted under Texas Civil Statutes, Article 8751, §7. The amendments are adopted on an emergency basis to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991 and became Texas Civil Statutes, Article 8751. The amendments are adopted in order to provide guidelines for the expiration of certificates of registration, the renewal of certificates of registration, and the penalty for failure to renew a certificate of registration.

Section 425.16 (concerning notice of expiration; change of address) dictates that the executive secretary is to send written notification of the expiration of a licensed irrigator or installer's certificate of registration. Section 425.19 (concerning renewal of certificate; same registration number) discusses the cost and procedure of renewing an unexpired certificate of registration. Section 425.22 (concerning failure to renew certificate of registration; notice; penalty) discusses the 90-day grace period in which an irrigator or installer may renew an expired certificate of registration, the consequences of failing to renew a certificate of registration within such grace period, and the penalties for purporting to be a licensed irrigator or installer in the absence of a current license. Section 425.25 (concerning unauthorized use of certificate) dictates who is authorized to use a certificate of registration and the consequences for violating this rule. Section 425.41 (concerning seal required) requires a licensed irrigator to obtain a seal that is approved by the board, register such seal with the board, and place such seal on all professional documents.

• 31 TAC §§425.16, 425.19, 425.22, 425.25

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§425.16. Notice of Certificate Expiration; Change of Address.

(a) The executive secretary shall notify each licensed irrigator and licensed installer of the date of expiration of his certificate and the amount of the fee that is required for the annual renewal of registration. Such notice shall be sent by first-class mail to the person's last known address according to records of the board at least 30 days before the expiration of a licensed irrigator's or licensed installer's certificate. [by June 30 of each year to each licensed irrigator's or licensed installer's last known address.]

(b) Licensed irrigators and licensed installers shall immediately notify the executive secretary in writing of any change in mailing address.

§425.19. Renewal of Certificate; Same Registration Number.

(a) A licensed irrigator or a licensed installer may renew an unexpired certificate [his certificate] of registration [at any time during the months of July and August of each year] by payment of a renewal fee in the amount of \$85 for a licensed irrigator or \$50 for a licensed installer. Payment shall be made by personal check, money order, or cashier's check made payable to the Texas Board of Irrigators.

(b) (No change.)

§425.22. Failure To Renew Certificate of Registration; Notice; Penalty.

(a) If a person's licensed irrigator or licensed installer certificate of registration has been expired for 90 days or less, the certificate of registration is automatically suspended; however, the person may renew the certificate by paying to the board the required renewal fee as stated in §425.19(a) of this title (relating to Renewal of Certificate: Same Registration Number), and a late payment fee that is one-half of the examination fee set out in §423.7 of this title (relating to Application and Examination Fees: Form of Payment). [Failure of a licensed irrigator or a licensed installer to renew his certificate of registration by August 31 of each year does not deprive him of the right to renewal, but his registration shall be automatically suspended and the fee paid for renewal of a certificate of registration after the August 31 deadline shall be increased 10% for each month or part of a month that the renewal payment is delayed.] If [the] a person [licensed irrigator or licensed installer] fails to pay in full his certificate of registration renewal fee and late payment fee within 90 days after expiration of the certificate of registration, [after the August 31 deadline,] the certificate of [his] registration shall not be renewable. [automatically expire.] The person must requalify under Texas Civil Statutes, Article 8751, §8, by submitting to examination, and otherwise [he must comply] complying with Chapter 423 of this title (relating to Registration of Irrigators and Installers) to obtain a new licensed irrigator or licensed installer certificate of registration.

(b) The executive secretary shall immediately notify each licensed irrigator and licensed installer who has failed to renew his certificate of registration by its expiration date [August 31] of such failure by certified mail sent to his last known address.

(c) Any failure of the executive secretary to notify a licensed irrigator or installer about renewal of a certificate of registration shall not affect the require-

ments relating to renewal of certificates of registration upon licensees under this subchapter.

(d)[(c)] Any irrigator or installer who acts as a licensed irrigator or licensed installer when his registration has been automatically suspended or has automatically expired pursuant to these sections is in violation of Texas Civil Statutes, Article 8751 and is subject to the penalties provided in §12 thereof.

§425.25. Unauthorized Use of Certificate.

(a) (No change.)

(b) Anyone who uses or attempts to use as his own the certificate of registration of someone else who is a licensed irrigator or licensed installer violates Texas Civil Statutes, Article 8751 and this section.

(c) (No change.)

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Seal

• 31 TAC §425.41

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§425.41. Seal Required.

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

(c) Each licensed irrigator who, on August 28, 1979, held a valid license as a landscape irrigator under Texas Laws 1973, Chapter 629, as amended, and therefore is registered pursuant to Texas Civil Statutes, Article 8751, §15, shall file with the board before January 1, 1981, in duplicate, a sample impression of his seal or rubber stamp facsimile of the design required by §425.44 of this title (relating to Seal and Rubber Stamp Facsimile Design) on letterhead or other business stationery which he uses.

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Chapter 427. Water Supply Connections

Standards for Connections to Potable Water Supplies

• 31 TAC §§427.2, 427.4, 427.6, 427.8, 427.10

The Texas Board of Irrigators adopts on an emergency basis new §§427.2, 427.6, and 427.8, an amendment to §427.4, and the repeal of §427.10, concerning standards for connections to potable water supplies. The new sections are adopted under Texas Civil Statutes, Article 8751, §7. The amendments and new sections are adopted on an emergency basis to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991 and became Texas Civil Statutes, Article 8751. The amendments and new sections are adopted in order to provide guidelines for; local inspection of irrigation systems; the type of backflow prevention device to install; and minimum industry standards for irrigators and installers.

Section 427.4 (concerning absence of local regulation) defines the type of backflow prevention device to be installed in the absence of local regulation

Section 427.2 (concerning local inspection) reiterates a portion of the authority of the local regulations in relation to inspection requirements, ordinances, or regulations designed to protect the public water supply. Such authority is executed by local inspectors. Section 427.6 (concerning required backflow prevention devices) describes the type of backflow prevention device that shall be installed in irrigation systems. The type of backflow prevention device installed in an irrigation system is contingent upon that system's potential for contamination of the public water supply. Section 427.8 (concerning minimum industry standards for irrigators/installers) describes the minimum industry standards for spacing, water pressure, derating, precipitation rate, depth coverage, and wiring.

Section 427.10 (concerning connections to alternative water supplies) is being repealed

The amendment, and new sections are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751

§427.2. Local Inspection. Any city, town, county, special purpose district, or other political subdivision of the state may be responsible for inspection of connections to its public water supply system up to and including the backflow prevention device. Water on the discharge side of the backflow prevention device is nonpotable and the portion of an irrigation system on the discharge side of the backflow prevention device is not required to be inspected by a

city, town, county, special purpose district, or other political subdivision of the state.

§427.4. Absence of Local Regulation-Backflow Prevention Devices. Where a licensed irrigator's or a licensed installer's connection of an irrigation system [or yard sprinkler system] to a public or a private potable water supply is not subject to any inspection requirement, ordinance, or regulation of any city, town, county, special purpose district, or other political subdivision of the state, the licensed irrigator or licensed installer making such connection shall install one of the following devices.

(1) **Atmospheric vacuum** [Vacuum] breakers. **Atmospheric vacuum** [Vacuum] breakers are designed to prevent only back-siphonage. Therefore, vacuum breakers shall not be used in any irrigation systems where back-pressure may occur. In this subchapter, back-pressure means any pressure, regardless of its source, against the outlet side of the backflow prevention device, which exceeds the supply pressure against the inlet side of the device. Where vacuum breakers may be used, they shall be installed at least six to 12 inches above the surrounding ground.

[(2) Atmospheric vacuum breakers.] In addition [to the prohibition and installation requirements of subsection (a) of this section], continuous pressure on the supply side of an atmospheric vacuum breaker is prohibited. Therefore, atmospheric vacuum breakers shall be installed in either of the two following ways.

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

(2)[(3)] **Pressure-type vacuum breakers** [breaker]. **Pressure-type vacuum breakers are designed to prevent back-siphonage and can operate under continuous pressure.** Subject to the prohibition and installation requirements of **paragraph (1)** [subsection (a)] of this section, a single pressure-type vacuum breaker may be used in systems where the sprinkler main may be pressurized at all times.

(3)[(4)] **Double check assembly backflow preventors** [preventor]. **Double** [A double] **check assembly (DCA) backflow preventors** [preventor] **are designed to prevent back pressure and back syphonage of water not containing any toxic substance.** They may be used where water supply pressure and back pressure on the backflow prevention device may continuously exist.

(4)[(5)] **Reduced pressure principle devices** [device]. **Reduced** [A reduced] **pressure principle devices** [device] **are designed for water containing toxic or non-toxic substances and for back pressure and back syphonage.** They shall

be installed above ground in a location so as to insure that the device will not be submerged during operation. [In addition, adequate provisions shall be made for any water which may be discharged through the device's release valve. A licensed irrigator may not incorporate this device in an irrigation system design without first obtaining informed approval to do so from the party for whom he is designing the system.]

§427.6. Required Backflow Prevention Devices.

(a) An irrigation system that does not have associated with it any type of injection device and that is connected or capable of being connected only to a single source of water presents a low potential for contamination of the water supply and is, therefore, considered to be a "low hazard" installation. Such an irrigation system shall be connected to the water supply through a double check assembly backflow preventor, an appropriate type of vacuum breaker, or other industry-approved low hazard" backflow prevention device.

(b) An irrigation system with any kind of injection device associated with it has a potential for introducing toxic substances into the water supply and is, therefore, considered to be a "high hazard" installation. Such an irrigation system shall not be connected to any water supply except only through an industry-approved "high hazard" backflow prevention device, such as an appropriate pressure-type backflow preventor or reduced pressure principle backflow prevention device.

(c) If an irrigation system has more than one water supply source, with one or more supplies being potable water and the other supply or supplies being nonpotable water, the irrigation system shall be connected to each water supply only through an industry-approved "high hazard" backflow prevention device.

§427.8. Minimum Industry Standards for Irrigators/Installers.

(a) Minimum industry standards for spacing.

(1) Irrigation systems using spray or rotary heads shall be designed and installed not to exceed the manufacturer's maximum recommended head spacing for a specific nozzle operating at a specific pressure.

(2) Irrigation systems using spray or rotary heads with no recommended spacing provided by the manufacturer shall be designed and installed in conformance with the average spacing specifications provided by a minimum of three other manufacturers of like equipment for the same size nozzle and the same pressure.

(3) Irrigation systems not using spray or rotary heads shall be installed according to the manufacturer's recommended installation specifications.

(b) Minimum industry standards for water pressure. Irrigation systems using spray or rotary heads shall be designed and installed according to the minimum head pressure required by the manufacturer for the nozzle and head spacing used.

(c) Minimum industry standards for wind derating.

(1) Irrigation systems using spray or rotary heads shall be designed and installed with the head spacing derated according to the manufacturer's recommendation for the average nighttime wind speed.

(2) Irrigation systems using spray or rotary heads with no manufacturer's recommended spacing deration provided shall be designed and installed in conformance with the average spacing wind derating information provided by three other manufacturers of like equipment for that size nozzle and pressure.

(d) Minimum industry standards for precipitation rate.

(1) Landscape irrigation systems using spray or rotary heads that are installed in Precipitation Zone Number 1, as defined in §421.1(A) of this title (relating to Definitions), shall be designed and/or installed to provide a minimum precipitation rate inches per hour for every hour that the landscape irrigation system is in operation.

(2) Landscape irrigation systems using spray or rotary heads that are installed in Precipitation Zone Number 2, as defined in §421.1(B), shall be designed and/or installed to provide a minimum precipitation rate of .275 inches per hour for every hour that the landscape irrigation system is in operation.

(3) Landscape irrigation systems using spray or rotary heads that are installed in Precipitation Zone Number 3, as defined in §421.1(C), shall be designed and/or installed to provide a minimum precipitation rate of .30 inches per hour for every hour that the landscape irrigation system is in operation.

(4) Landscape irrigation systems using spray or rotary heads that are installed in Precipitation Zone Number 4, as defined in §421.1(D), shall be designed and/or installed to provide a minimum precipitation rate of .325 inches per hour for every hour that the landscape irrigation system is in operation.

(c) Minimum industry standards for depth coverage. Irrigation systems using spray or rotary heads shall be designed and/or installed according to the manufacturer's recommended depth coverage specifications, unless:

(1) the manufacturer has no recommended depth coverage. If the manufacturer has no recommended depth coverage, the irrigation system shall be designed and/or installed to provide a minimum of six inches of coverage over piping and equipment; or

(2) utilities, structures, or tree roots are encountered. If utilities, structures, or tree roots are encountered, the irrigation system shall be designed and/or installed to provide a minimum of two inches of coverage over piping and equipment.

(f) Minimum industry standards for wiring irrigation systems.

(1) The wiring used in an irrigation system that connects section valves to controllers shall be Underwriters Laboratories listed for direct underground burial.

(2) The wiring used in an irrigation system that connects section valves to controllers shall be sized according to the manufacturer's recommendation.

(3) Direct burial wire splices used in an irrigation system shall be waterproof.

(4) Direct burial wire splices used in an irrigation system shall consist of a mechanical wire connector inside of a container surrounded by a waterproof sealant.

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◆ ◆ ◆
• 31 TAC §427.10

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§427.10. *Connections to Alternate Water Supplies.*

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Chapter 429. Violation of Statute or Board Rule

Complaint Process

The Texas Board of Irrigators adopts on an emergency basis amendments to §§429.4, 429.7, 429.10, 429.44, 429.51, 429.53, and 429.55, the repeal of §§429.1, 429.13, 429.16, 429.19, 429.22, and 429.41, and new §§429.1-429.3, 429.5, 429.11, and 429.13-429.19, concerning the processing of a complaint filed with the board against an irrigator or installer, the investigation of a complaint, informal resolution of a complaint, revocation of registration by the board, civil penalties to be assessed by a court, and action by the attorney general to recover civil penalties and pursue injunctive relief; the steps taken to file a complaint with the board against an irrigator or installer, setting complaint on board agenda for further investigation, board consideration of and action on complaints, referral of complaints by the board to hearings before the Texas Water Commission, referral of probable violations to the board by board members, and the Texas Water Commission's authority to revoke the registration of a licensed irrigator or installer; and the board's issuance of enforcement orders, hearings with respect to alleged violations of the Licensed Irrigators Act or of any order of the board, the steps taken to file a complaint with the board against an irrigator or installer, notice of complaint status, the hearing request and enforcement report, the procedures for notice, hearing, action, and appeal of alleged violations of Texas Civil Statutes, Article 8751, or a rule of the board. The amendments, repeals, and new sections are adopted under Texas Civil Statutes, Article 8751, §7. The amendments are adopted on an emergency basis to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991 and became Texas Civil Statutes, Article 8751. The amendments, repeals, and new rules are adopted on an emergency basis in order to provide guidelines for making complaints to the Board of Irrigators, investigating complaints, and resolving complaints through either informal resolution or a formal hearing.

Section 429.4 (concerning board's receipt of complaint) dictates the duties of the executive secretary upon receipt of a complaint. Section 429.7 (concerning investigation of complaint) discusses the duties of the executive secretary, or an investigator designated by the executive secretary, in investigating a complaint and the authority of the executive secretary to refer the complaint to the attorney general if the executive secretary determines that immediate legal action is necessary to enforce applicable statutes or board rules. Section 429.10 (concerning informal resolution of complaint) provides that the executive secretary determines when a complaint is informally resolved and notifies the complainant, respondent, and the board of such informal resolution. Section 429.44 (concerning surrender of certificate and identification card, seal) discusses that once an irrigator's/installer's license has been revoked by the board, such irrigator/installer shall surrender his cer-

tificate of registration and identification card to the board. Section 429.51 (concerning civil penalty) sets out the maximum civil penalty a person may be assessed when found in violation of statutes, rules, or board orders by a court of competent jurisdiction. Section 429.53 (concerning injunctions) dictates that the board may enforce Texas Civil Statutes, Article 8751, board rule, and board order by injunctions or other appropriate remedy. Section 429.55 (concerning action by attorney general) provides for the recovery of civil penalties, or for injunctive relief through action by the attorney general.

Sections 429.1, 429.13, 429.16, 429.19, 429.22, and 429.41 are being repealed in order to comply with Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991 and became Texas Civil Statutes, Article 8751, that mandates the establishment of a formal hearing process before the board.

Section 429.1 (concerning enforcement orders) dictates that the board may issue orders enforcing compliance with Texas Civil Statutes, Article 8751, board rules, and board orders. Section 429.2 (concerning hearings on alleged violations) discusses that the board may order a public hearing with respect to alleged violations, may receive relevant evidence, may compel attendance of a witness, shall make findings of fact and conclusions of law, and is authorized to issue orders. Section 429.3 (concerning complaint) defines who may file a complaint to the board and what that complaint must include. Section 429.13 (concerning hearing request and enforcement report) delineates the steps to be taken by the executive secretary in initiating an enforcement action; what matters are to be included in the enforcement report; what the proposed penalty is to be based upon, and the maximum administrative penalty allowed. Section 429.14 (concerning notice) provides that the executive secretary shall notify an alleged violator of the issuance of a violation report. This section also dictates what information the notice is to include, when the notice shall be sent, and under what circumstances a hearing shall be set. Section 429.15 (concerning answer) discusses the following: that if the executive secretary recommends that a penalty be assessed, the respondent may answer within a specific time period; the contents of the respondent's answer, the board's action after receiving respondent's answer; circumstances under which supplemental pleadings may be filed; presumptions to be made in the hearing except for good cause shown; amendments to answer consenting to the executive secretary's violation report and recommended penalties, and that if the respondent and the executive secretary reach a settlement, such settlement is subject to board approval. Section 429.16 (concerning hearing) dictates the following when the board may remand the matter for an evidentiary hearing before a hearing examiner that has been designated by the board, that the hearing examiner shall make findings of fact and conclusions of law, and issue a proposal for decision; and that the board and the hearing's examiner have subpoena power.

Section 429.17 (concerning board consideration of complaint, board action on complaint) prescribes the options the board has upon

receiving the hearing examiner's recommendations. This section also delineates factors the board is to consider in determining the penalty amount. Section 429.18 (notice of board order) dictates that the executive secretary shall send notice to the respondent of the board's order. Such notice shall contain elements specified in this section. Section 429.19 (concerning appeals of administrative penalties) sets out the procedures for a respondent's appeal of an administrative penalty. Specifically, this section: requires that the respondent pay the penalty in full within 30 days of the final board order; defines how a respondent who is assessed a penalty may suspend enforcement of such penalty while seeking judicial review; provides the options of a respondent who is financially unable to pay the assessed penalty; delineates the consequences for failing to act on a penalty within 30 days of the board's final order; dictates the procedure for collecting or returning appropriate penalty amounts after final appellate determination; provides that supersedeas bonds or escrow accounts must be drawn according to a form on file in the executive secretary's office; and defines the standard of review of the board's order or decision.

• 31 TAC §§429.1 429.13, 429.16, 429.19, 429.22

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§429.1. *Complaint.*

§429.13. *Setting Complaint on Board Agenda; Notice.*

§429.16. *Board Consideration of Complaint; Board Action on Complaint.*

§429.19. *Copies of Board Order.*

§429.22. *Probable Violation Report of Board Member.*

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Texas Board of Irrigators

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• 31 TAC §§429.1-429.5, 429.7, 429.10, 429.11, 429.13-429.19

The amendments and new sections are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its

powers and duties under Texas Civil Statutes, Article 8751.

§429.1. *Enforcement Orders.* The board upon a recommendation of the executive secretary, or upon its own motion, may issue appropriate orders enforcing and directing compliance with the provisions of Texas Civil Statutes, Article 8751, the rules of the board, and other orders of the board. A copy of every such order shall be sent by certified mail to the person to whom it is directed. However, when the board determines that time is of the essence in achieving compliance, the order may be transmitted in person, by telephone, teletype, telecopier (telefax), or other satisfactory means, but it shall be promptly followed by the written order sent by certified mail as aforesaid. When the person to whom the order is directed receives it, regardless of how that person initially receives the order, the person shall immediately comply with the order according to its terms.

§429.2. *Hearings on Alleged Violations.* The board may, upon the request of the executive secretary, order a public hearing with respect to alleged violations of the provisions of the Licensed Irrigators Act or of any order of the board. The board may receive relevant and competent evidence from any party who appears at the hearing, may compel the attendance of witnesses, shall make findings of fact and conclusions of law, and is authorized to issue orders and make determinations necessary to effectuate the purposes of the Licensed Irrigators Act.

§429.3. *Complaint.*

(a) Any person with personal knowledge of any probable violation of Texas Civil Statutes, Article 8751 or of these sections may file a written complaint with the board.

(b) Any person with personal knowledge of any probable act of a licensed irrigator or licensed installer which may constitute gross negligence, incompetency, or misconduct while he is acting as a licensed irrigator or licensed installer may file a written complaint with the board.

(c) A written complaint must include the name and address of the person against whom the complaint is filed and the alleged facts and must be notarized.

§429.4. *Board's Receipt of Complaint.*

(a) Upon the board's receipt of a complaint, the executive secretary must [shall:]

[(1) send three copies of the complaint to the executive director;]

[(2)] send one copy of the complaint by certified mail to the respondent. [; and]

[(3)] send a copy of the complaint to the chairman of the board.]

(b) If a complaint filed with the board is not notarized or does not allege sufficient facts upon which the executive secretary can determine the basis for enforcement of Texas Civil Statutes, Article 8751, or the rules of the board, the executive secretary shall immediately notify the complainant.

§429.7. Investigation of Complaint.

(a) The executive secretary or an investigator designated by the executive secretary shall investigate each notarized complaint that alleges sufficient facts to establish a prima facie basis for enforcement of Texas Civil Statutes, Article 8751, or the rules of the board. [The chairman of the board may appoint not more than three members of the board to investigate a complaint. The executive secretary shall furnish each board member appointed to investigate a complaint with a copy of the complaint file.]

(b) The executive secretary or an investigator designated by the executive secretary [Appointed members] shall investigate the matters complained of and may take steps to secure the respondent's voluntary compliance with Texas Civil Statutes, Article 8751, and these sections, or otherwise informally resolve the matter.

(c) Upon completion of the investigation, the investigator shall file a written report with the executive secretary, [the investigating board members shall file with the executive secretary a written report,] including a detailed description of the investigation and any informal resolution, [; and any recommendations to the board.]

(d) During investigation of a complaint, if the executive secretary determines [chairman and board members appointed to investigate the complaint determine] that immediate legal action is necessary to enforce Texas Civil Statutes, Article 8751, or the rules of the board, the executive secretary immediately shall refer the complaint to the attorney general with a request that suit be initiated to obtain injunctive and other appropriate relief. Copies of the request shall be sent to the complainant, respondent, and all board members. At a subsequent meeting of the board, the investigator [a board member appointed to investigate the complaint] shall report on the investigation and actions taken to enforce Texas Civil Statutes, Article 8751, and the rules of the board.

§429.10. Informal Resolution of Complaint. Where the executive secretary

[chairman of the board] determines that a complaint is informally resolved:

(1) the executive secretary shall so inform the complainant and respondent in writing, notifying them that the executive secretary will report the resolution to the board with a recommendation that the board [will] take no further action on the complaint unless requested to do so by the complainant; [and]

(2) the investigator or the executive secretary [board members investigating the complaint] shall brief the board, at its next meeting, on the complaint, investigation, and resolution; and [.]

(3) the board will make a final decision on the complaint that it determines to be consistent with the informal resolution between the parties the Licensured Irrigators Act, and the rules of the board.

§429.11. Notice of Complaint Status. For each written complaint filed with the board in accordance with §429.4 of this title (relating to Board's Receipt of Complaint) that is within the authority of the board to resolve, the executive secretary on behalf of the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

§429.13. Hearing Request and Enforcement Report.

(a) If the executive secretary determines through investigation of a complaint that evidence exists of a violation of Texas Civil Statutes, Article 8751, or the rules of the board, the executive secretary may refer such evidence to the board and may initiate an enforcement action by issuing a petition to the board that alleges the facts upon which the action is based, incorporating the complaint upon which the petition is based, and requesting a hearing and appropriate relief. The executive secretary shall set the petition for consideration by the board as soon as practicable.

(b) If the enforcement action seeks or recommends an administrative penalty to be assessed by the board and is brought pursuant to Texas Civil Statutes, Article 8751, or any other statute authorizing the board to assess an administrative penalty, an enforcement report shall accompany the petition of the executive secretary. The enforcement report shall include:

(1) a brief statement of the nature of each alleged violation;

(2) the statute and rules of the board violated;

(3) the facts relied upon by the executive secretary in concluding that a violation has occurred;

(4) a recommendation that an administrative penalty be assessed;

(5) the amount of the recommended penalty; and

(6) an analysis of the following factors upon which the proposed penalty shall be based:

(A) the seriousness of each alleged violation, including, but not limited to, the nature, circumstances, extent, duration, and gravity of the prohibited acts; the hazard or potential hazard created to the health, safety, and general welfare of the consuming public and the public at large;

(B) with respect to the alleged violator:

(i) the history and extent of previous violations;

(ii) the degree of culpability;

(iii) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and actions taken to mitigate any damage or harm caused by the violation;

(iv) any economic benefit gained through the violations; and

(v) the amount necessary to deter future violations; and

(C) any other matters that justice may require.

(c) The recommended penalty for each violation shall be specified in the enforcement report in an amount not to exceed \$1,000.

§429.14. Notice.

(a) The executive secretary shall notify the alleged violator by certified mail, return receipt requested, of the issuance of the executive secretary's petition concerning a violation or noncompliance and the recommendation, if any, that a license be suspended or revoked and/or that an administrative penalty be assessed. The notice shall include a brief summary of the charges, a statement of whether the revocation or suspension of the alleged violator's license will be recommended, and a statement of the amount of the penalty recommended. The notice shall also include a statement of the right of the person charged to an evidentiary hearing on any or all of the following: the occurrence of the violation or the suspension or revocation of the license and/or the amount of the penalty. The notice shall be sent not later than the 14th day after the date on which the enforcement report is issued, or if an enforce-

ment report is not issued, then at least 20 days prior to the hearing before the board or a hearings officer appointed by the board.

(b) If the person charged requests an evidentiary hearing or fails to timely respond to the notice as required by §429.15(a) of this title (relating to Answer), the executive secretary shall set an evidentiary hearing and shall send notice of the time and place of the hearing to the person charged not less than 10 days prior to the evidentiary hearing by certified mail, return receipt requested.

(c) In all cases where the executive secretary proposes that the board suspend or revoke a person's certificate of registration, the board will make the final decision upon such proposal. No decision by the board may be made upon a proposal to revoke or suspend a person's certificate of registration except after notice and a hearing before the board or a hearings officer appointed by the board.

§429.15. Answer.

(a) If the executive secretary recommended in the enforcement report that a penalty be assessed, the person charged may submit to the board a sworn answer, not later than 20 days after the date on which notice of the initial hearing before the board is received, containing either written consent to the executive secretary's petition and enforcement report, including the recommended penalty, or a written request for an evidentiary hearing.

(b) If the person charged consents to the petition and enforcement report, including the recommended penalty, the answer shall affirmatively so state. After the answer is received, the board shall issue an order approving the enforcement report and the recommended penalty, granting the petition, and ordering payment of the recommended penalty.

(c) If the person charged requests an evidentiary hearing to contest either the occurrence of the violation, the recommended penalty, or both, the answer shall:

(1) admit or deny all factual matters; and

(2) affirmatively allege any and all claims, defenses, or mitigating factors the person charged may have and the reasoning in support thereof.

(d) Supplemental pleadings may be filed by the person charged, but only in the event good cause can be shown as to why claims, defenses, or mitigating factors were not affirmatively alleged or factual matters not controverted in the original answer.

(e) Except for good cause shown:

(1) factual matters not controverted shall be presumed admitted;

(2) failure to raise a claim, defense, or mitigating factor shall be presumed to be a waiver of such claim, defense, or mitigating factor; and

(3) new matters alleged in the answer shall be presumed to be denied by the executive secretary unless admitted in subsequent pleading or stipulation by the executive secretary.

(f) Nothing shall preclude the person charged from amending the answer at any time so as to consent to the executive secretary's violation report and recommended penalty. Further, the executive secretary and person charged may reach an agreement such that an agreed order is entered wherein the person charged admits to any or all of the violations alleged in the executive secretary's violation report and consents to the assessment of a specific administrative penalty. Such settlement of the matters raised by the executive secretary's violation report is subject to the approval of the board.

§429.16. Hearing.

(a) Whenever the executive secretary sets a matter for hearing in accordance with §429.14(b) of this title (relating to Notice), the board may remand such matter for hearing to be held by a hearings examiner for the purpose of developing an evidentiary record and recommendations as stated in subsection (c) of this section, prior to proceedings before the board.

(b) The board shall designate a hearings examiner when a hearing is either requested by the respondent or is automatically set due to respondent's failure to timely answer. The chairman of the board is authorized to effectuate a remand to a hearings examiner and to designate a hearings examiner on behalf of the board in accordance with these rules.

(c) The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation, including a recommendation as to the amount of the proposed penalty if a penalty is warranted. These hearings shall be held in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(d) The board and a hearings examiner designated by the board may compel the attendance of a witness before the board or hearings examiner as in civil cases in district court by issuance of a subpoena.

§429.17. Board Consideration of Complaint; Board Action on Complaint.

(a) Based upon the evidentiary record and recommendations of the hearings

examiner, the board by order may find a violation has occurred and may assess a penalty or may find that no violation has occurred.

(b) When assessing an administrative penalty, the board shall consider each factor listed in §429.12(b)(6) of this title (relating to Hearing Request/Violation Report) in determining the amount of the penalty.

(c) As provided by law, the board may suspend or revoke the registration of, or place on probation a person whose certificate has been suspended, and reprimand any licensed irrigator or licensed installer after giving due notice and an opportunity for hearing as required by law, if it finds that he is guilty of:

(1) a violation of Texas Civil Statutes, Article 8751, or a rule of the board;

(2) fraud or deceit in obtaining a certificate of registration; or

(3) gross negligence, incompetency, or misconduct while acting as a licensed irrigator or licensed installer.

(d) If the board chooses to probate the suspension, the board may require the violator to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit activities to the areas prescribed by the board; or

(3) continue or renew professional education until the registrant attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

§429.18. Notice of Board Order. The executive secretary shall give notice of the board's order to the person charged. Such notice shall be sent by first-class mail to the person's last known address according to board records. The notice shall include:

(1) the findings of fact and conclusions of law separately stated;

(2) the amount of the penalty ordered, if any;

(3) a statement of the right of the person charged to judicial review of the board's order, if any; and

(4) other information required by law.

§429.19. Appeals of Administrative Penalties.

(a) Within the 30-day period immediately following the day on which the board's order is final, as provided by Texas

Civil Statutes, Article 6252-13a, §16(c), the person charged with the penalty shall pay the penalty in full.

(b) The person assessed a penalty by the board may suspend enforcement of the penalty while seeking judicial review, by contesting either the occurrence of the violation, the recommended penalty, or both. Enforcement of the penalty may be suspended by forwarding the amount of the penalty to the executive secretary for placement in an escrow account or posting with the executive secretary a supersedeas bond in a form approved by the executive secretary for the amount of the penalty, within the 30-day period immediately following the day on which the board's order is final.

(c) In the event the person assessed a penalty by the board is financially unable to satisfy the requirements set out in subsections (a) or (b) of this section, that person may satisfy the requirements of subsection (b) of this section, by filing with the executive secretary an affidavit sworn by the person assessed a penalty. Such affidavit shall state that person is financially unable either to forward the amount of the penalty or to post bond. The affidavit shall be filed within the 30-day period immediately following the day on which the board's order is final.

(d) Failure to pay the penalty in full, or failure to forward the amount of the penalty for placement in an escrow account, or post a supersedeas bond, or failure to file the affidavit with the executive secretary within the 30-day period immediately following the day on which the board's order is final, shall result in a waiver of all legal rights to judicial review. In the event the person assessed fails to take any of the actions in subsections (a)-(c) of this section, the executive secretary may forward the matter to the attorney general for enforcement.

(e) In the event that the final appellate determination is against the person assessed a penalty, he or she shall pay the board the full amount of the penalty, and the board shall deposit the amount of the penalty in the state treasury to the credit of the general revenue fund.

(f) In the event that the final appellate determination reduces the amount of the penalty or is in favor of the person assessed, the executive secretary shall return the appropriate amount of the penalty assessed plus accrued interest on the amount returned with a certificate of its return. Interest on the amount returned shall be paid at the rate described in Texas Civil Statutes, Article 8751, §11A(n).

(g) Any supersedeas bond or escrow account filed with the executive secretary for the purpose of appeal of the final decision of the board shall be drawn accord-

ing to a form on file in the office of the executive secretary. Upon request, the executive secretary shall certify the receipt of the amount of any penalty received for the purpose of appeal.

(h) Judicial review of the order or decision of the board assessing the penalty shall be in accordance with the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County as provided by Texas Civil Statutes, Article 6252-13a.

Issued in Austin, Texas, on January 27, 1992.

TRD-9201206 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: January 27, 1992

Expiration date: May 26, 1992

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

Revocation of Registration

• 31 TAC §429.41

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7 which provides the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751

§429.41. Grounds for Revocation of Registration.

Issued in Austin, Texas, on January 27, 1992.

TRD-9201255 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: January 27, 1992

Expiration date: May 26, 1992

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

• 31 TAC §429.44

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§429.44. *Surrender of Certificate and Identification Card; Seal.* Upon the revocation of a licensed irrigator's or licensed installer's registration by the board [commission], the affected irrigator or installer shall immediately surrender his certificate of registration and identification card to the board and shall cease using his official seal and any rubber stamp facsimile of the seal in the irrigator's possession.

Issued in Austin, Texas, on January 27, 1992.

TRD-9201207 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: January 27, 1992

Expiration date: May 26, 1992

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

Penalty

• 31 TAC §§429.51, 429.53, 429.55

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§429.51. Civil Penalty.

(a) A person who violates Texas Civil Statutes, Article 8751; a rule adopted by the board pursuant to Article 8751; or an order of the board [commission] issued after a hearing, pursuant to Texas Civil Statutes, Article 8751, §5(c); and/or an order suspending or revoking a certificate of registration under Texas Civil Statutes, Article 8751, §11, is subject to a civil penalty not to exceed \$3,000 [\$1,000] for each offense. Each day a violation is committed is a separate offense.

(b) (No change.)

§429.53. *Injunctions.* The board may enforce Texas Civil Statutes, Article 8751, a board rule, or board [commission] order by injunctions or other appropriate remedy. The action may be brought by the board in a court of competent jurisdiction in the county in which the offending activity occurred, in which the defendant resides, or in Travis County.

§429.55. *Action by Attorney General.* At the request of the executive secretary [board], the attorney general shall institute and conduct a suit in the name of the state to recover the civil penalty as provided under §429.51 of this title (relating to Civil Penalty) or for injunctive relief or other appropriate remedy or for both.

Issued in Austin, Texas, on January 27, 1992.

TRD-9201208 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: January 27, 1992

Expiration date: May 26, 1992

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

Chapter 431. Standards of Conduct

Subchapter A. Licensed Irrigator and Installer Standards

• 31 TAC §§431.1-431.6

The Texas Board of Irrigators adopts on an emergency basis amendments to §§431.1-431.6, concerning the standards of conduct for licensed irrigators or installers. These amendments are proposed under Texas Civil Statutes, Article 8751, §7. These amendments are adopted on an emergency basis in order to; add installers as a group that is governed by Chapters 421, 423, 425, 427, 429, and 431 of Title 31, Texas Administrative Code; provide guidelines for advertising by irrigators and installers; and provide consumers with information regarding regulation of irrigation in Texas.

Section 431.1(b) (relating to purpose of standards) requires that applicants are to become informed of the standards of conduct provided in this chapter, while licensed irrigators or installers are deemed to have notice of such standards of conduct. Section 431.2 (relating to intent) prescribes the purpose of establishing standards of conduct and the consequences for failing to comply with such standards. Section 431.3 (relating to proficiency in field of irrigation; representation of qualifications) defines competence in the performance of irrigation or installation, and requires truthful disclosure by a licensed irrigator or installer of his qualifications. Section 431.4 (relating to advertisement) dictates where a licensed must display his registration number; prohibits false, misleading, or deceptive practices relating to the bidding or advertising of services; and requires the display of the board's name, address, and telephone number at a licensed irrigator's or installer's place of business. Section 431.5 (relating to contracts) states what a written agreement to install an irrigation system shall contain, and if there is no written agreement the licensed irrigator/installer is to provide written information as to how the consumer may contact the board. Section 431.6 (relating to design) dictates what shall be included in a design, written agreement, bill for service, or document.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

§431.1. Purpose of Standards.

(a) (No change.)

(b) Every applicant for registration as a licensed irrigator or installer shall become fully informed of the obligations and responsibilities inherent in the practice of irrigation as outlined by these standards of conduct. Each licensed irrigator or installer shall be deemed to have notice of these standards of conduct, and shall be required to abide by the standards.

§431.2. Intent.

(a) These standards of conduct are established to prescribe responsibility and knowledge on the part of the irrigator and installer and to aid in governing the irrigation industry.

(b) The board shall determine what actions constitute violations of the standards and institute appropriate disciplinary action which may lead to monetary penalties and/or the suspension or revocation of a license in accordance with the applicable state statutes.

§431.3. Proficiency in Field of Irrigation; Representation of Qualifications.

(a) Competence in the performance of services of a licensed irrigator or installer requires that the licensee's knowledge and skill encompass the currently accepted practice and knowledge of selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system including the connection of such system in and to a private or public, raw or potable water supply system or any water supply. Licensed irrigators must therefore maintain proficiency in the field of irrigation.

(b) A licensed irrigator or installer shall accurately and truthfully represent to a prospective client his qualifications and capabilities of resources to perform the services requested and shall not perform services for which he is not qualified by experience or knowledge in the technical field involved.

§431.4. Advertisement.

(a) A licensed irrigator or installer shall display his registration number in the form of "LI _____" block letters at least two inches high, on both sides of all vehicles used by him or by his employees for installation, service, or repair of irrigation [irrigations] systems.

(b) (No change.)

(c) False, misleading, or deceptive practices relating to the bidding or advertising of services and fees by a licensed irrigator or a licensed installer is prohibited.

(d) The name, mailing address, and telephone number of the board shall be prominently displayed on any sign in plain view at the place of business of a licensed irrigator or licensed installer.

§431.5. Contracts.

(a) A licensed irrigator's agreement to install an irrigation system, if in writing, shall specify his name, business address and

telephone number, date that the agreement was signed by each party thereto, total agreed price, and the design number or a copy of the design. If there is no written design, the agreement shall contain a brief description of the major components of the system to be installed. Such agreement shall also provide the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board.

(b) All written contracts and bills for service to install irrigation systems shall include the statement: "Irrigation in Texas is regulated by the Texas Board of Irrigators, P.O. Box 12337, Austin, Texas 78711 [78701], (512) 463-7990 [475-8161]."

(c) If there is no written agreement or bill for service, the irrigator or installer shall provide a written document that includes the statement: "Irrigation in Texas is regulated by the Texas Board of Irrigators, P. O. Box 12337, Austin, Texas 78711, (512) 463-7990."

§431.6. Design.

(a) No licensed irrigator may design an irrigation system, or a portion thereof, so as to require the use of any component part in a way which exceeds the manufacturer's performance limitations for the part, unless the use is necessary to accommodate special site conditions. Special site conditions shall be noted on the design, [or in] the written agreement, the bill for service, or the document described in §431.5(c) of this title (relating to Contracts) [if there is no written design].

(b) (No change.)

(c) The design [work] shall include a statement of area coverage of the irrigation system, and any system which does not provide 100% coverage shall be so noted on the design, [or in] the written agreement, the bill for service, or the document described in §431.5(c) of this title. [if there is no written design].

Issued in Austin, Texas, on January 27, 1992.

TRD-9201209
Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: January 27, 1992

Expiration date: May 26, 1992

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



TITLE 34. PUBLIC FI-
NANCE

Part I. Comptroller of
Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and
Use Tax

• 34 TAC §3.314

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of new §3.314, for a 60-day period effective January 29, 1992. The text of new §3.314 was originally published in the October 4, 1991, issue of the *Texas Register* (16 TexReg 5446).

Issued in Austin, Texas on January 24, 1991.

TRD-9201172

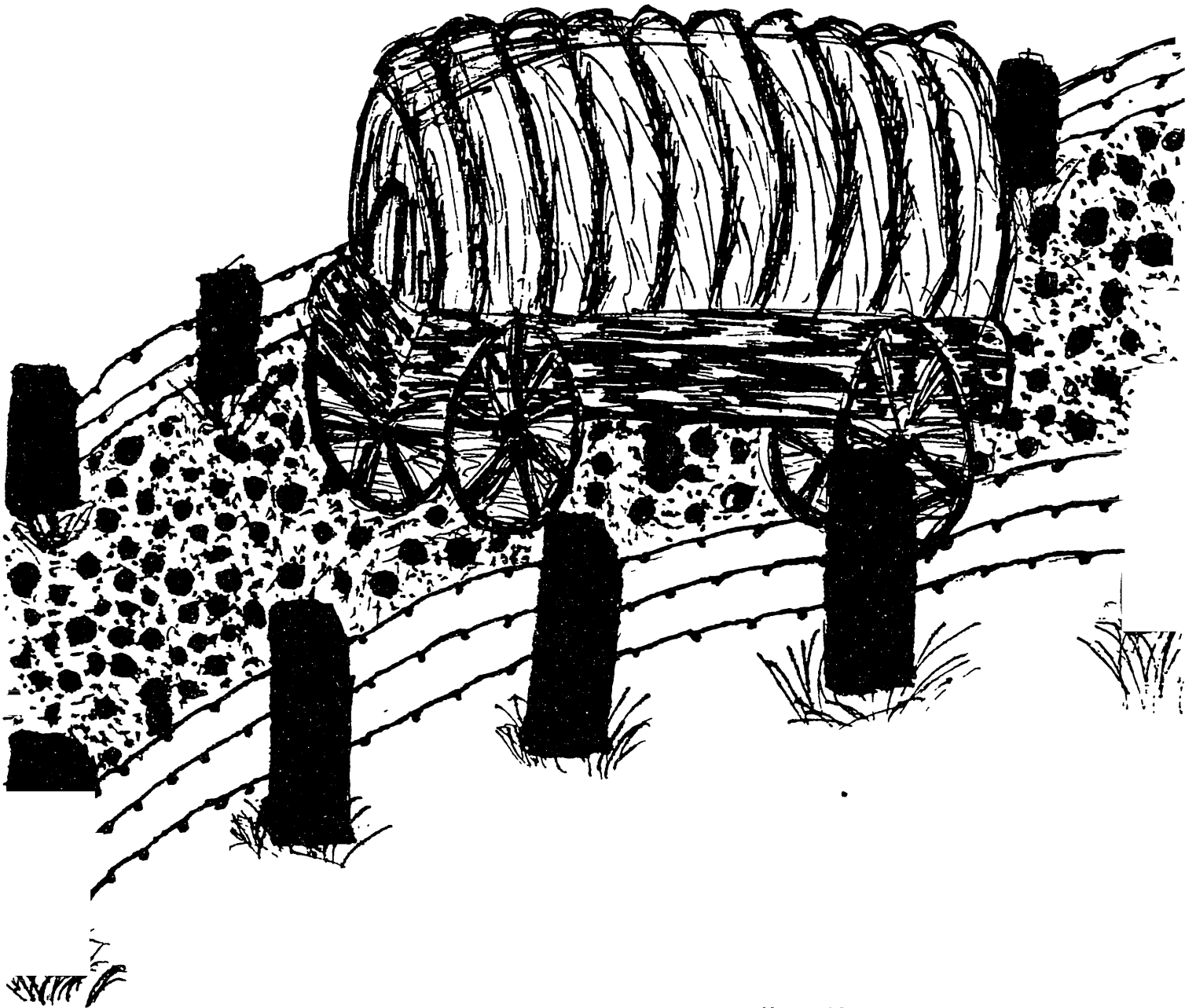
Anne Hildebrand
Agency Liaison
Comptroller of Public
Accounts

Effective date: January 29, 1992

Expiration date: March 29, 1992

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





Name: Megan Berryman

Grade: 7

School: Clear Lake Intermediate, Clear Creek ISD

Proposed Sections

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

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

TITLE 1. ADMINISTRATION

Part II. Texas Ethics Commission

Chapter 5. Campaign Financing

Subchapter B. Reporting Forms Candidate/Officerholder Sworn Report of Contributions and Expenditures

• 1 TAC §5.11

(Editor's Note: The Texas Ethics Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Ethics Commission proposes new §5.11, concerning the filing of Sworn Reports by Candidates/Officerholders. The new section sets forth the form for the reporting of contributions and expenditures by candidate/officerholders.

Jim Mathieson, staff attorney, 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. Mathieson, 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 comply with Title 15, Texas Election Code, by promulgating the necessary forms for candidates/officerholders to file their sworn reports of contributions and expenditures. 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 Jim Mathieson, 1101 Camino La Costa, Austin, Texas 78752. Only written comments will be accepted.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provides the Texas Ethics Commission with the authority to promulgate rules governing, Title 15, Texas Election Code, and prescribe forms required to be filed with the commission.

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 January 24, 1992.

TRD-9201156 Jim Mathieson
Staff Attorney
Texas Ethics Commission

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 406-0100

◆ ◆ ◆ Notice of Intent to File Monthly Sworn Reports of Contributions and Expenditures or Notice of Intent to Revert to the Regular Filing Schedule

• 1 TAC §5.12

(Editor's Note: The Texas Ethics Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Ethics Commission proposes new §5.12, concerning the notice of intent to file monthly sworn reports of contributions and expenditures or notice of intent to revert to the regulate filing schedule by general-purpose committees. This section set forth the form for the reporting of notice of intent to file monthly sworn reports of contributions and expenditures or intent to revert to the regular filing schedule by general-purpose committees.

Jim Mathieson, staff attorney, 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. Mathieson, 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 comply with Title 15, Texas Election Code, by promulgating the necessary forms for general-purpose committees to report their intent to file monthly sworn reports of contributions and expenditures or to revert to the regular filing schedule. 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 Jim Mathieson, 1101 Camino La Costa, Austin, Texas 78752. Only written comments will be accepted.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provides the Texas Ethics Commission with the authority to promulgate rules governing Title 15, Texas Election Code, and prescribe forms required reports to be filed with the commission.

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 January 24, 1992.

TRD-9201152 Jim Mathieson
Staff Attorney
Texas Ethics Commission

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 406-0100

◆ ◆ ◆ Chapter 10. Registration and Regulation of Lobbyists

Lobbyist Termination Notice

• 1 TAC §10.35

(Editor's Note: The Texas Ethics Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Ethics Commission proposes new §10.35, concerning the termination notice by lobbyists. This section set forth the form by which lobbyists would report notice of termination of lobbying activities to the commission.

Jim Mathieson, staff attorney, 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. Mathieson, 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 comply with the Government Code, §305, by promulgating the necessary forms for lobbyists to file their notices of termination. 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 Jim Mathieson, 1101 Camino La Costa,

Austin, Texas 78752. Only written comments will be accepted.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provides the Texas Ethics Commission with the authority to establish registration and regulation requirements concerning lobbyists and to prescribe forms for reports to be filed with the commission.

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 January 24, 1992.

TRD-9201154 Jim Mathison
Staff Attorney
Texas Ethics Commission

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 406-0100

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 15. Consumer Services Division

Metrology

• 4 TAC §§15.22, 15.24, 15.25

The Texas Department of Agriculture proposes amendments to §§15.22, 15.25, and new 15.24, concerning regulation of commercial scale- and meter-service agencies and service persons. The purpose of these changes is to improve the accuracy of weighing and measuring devices used in commercial transactions in Texas by setting standards for the scale- and meter-service industry. These service agencies and service persons install all new weighing and measuring devices in Texas and service, repair, or adjust each scale or meter that fails TDA inspection. The new standards will encourage professionalization in the service industry and improve the quality of scale and meter installations and repairs. In turn, these improvements will make commerce in weighed and measured goods in Texas fairer and assist in the orderly and effective operation of TDA's weights and measures enforcement program.

The amendment to §15.22 adds definitions to be used in Chapter 15. New §15.24 provides new requirements for registration as a registered service person or registered service agency and includes procedures for application, required qualifications, privileges and responsibilities of a registrant, testing requirements, minimum equipment specifications, procedures for issuance of and suspension and/or revocation of a certificate of registration, equipment inspection requirements, and procedures for use of new installation reports and out-of-order tags.

James H. Eskew, coordinator for metrology labs, 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. There will be no effect on local employment as a result of enforcing or administering the sections.

Mr. Eskew 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 improved commercial scale and meter service, improved enforcement of state weights and measures law, improved consumer protection, and fairer trade in commodities and products that are sold by weight or measure in this state. 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 \$25 per year in the form of a new registration fee, and the anticipated economic cost to service agencies that are required to comply with the sections as proposed will be \$50 per year in the form of a new registration fee. Additional economic costs for training, additional or better equipment, or professional publications may be incurred by persons whose training, equipment, or information resources do not meet the standards established by the proposed regulation.

Comments may be submitted to James H. Eskew, Coordinator For Metrology Labs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments and new section are proposed under the Texas Agriculture Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of Chapter 13, Texas Agriculture Code, concerning the sale and use of weights and measures and to supervise all weights and measures sold in this state; and the General Appropriations Act, House Bill 1, 72nd Legislature, 1991, which establishes fee rates for the registration and issuance of the registration card issued to registered service persons and certificates of registration issued to registered service agencies by the Texas Department of Agriculture.

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

Anniversary date—The month and day each year on which a service agency's standards are due for recalibration and on which the agency's scale or meter service agency registration expires.

Commercial and law-enforcement weighing and measuring device—Any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area or measurement of quantities, things produced, articles for distribution or consumption purchased offered or submitted for sale, hire, or award, or in computing any charge or payment for services rendered on the basis of weight

or measure including an accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects the accuracy of the device. The term also includes weighing and measuring equipment in official use for the enforcement of law or for the collection of statistical information by government agencies.

Department—Texas Department of Agriculture.

New installation report—A form supplied by the department that is to be completed and submitted for each new weighing or measuring device placed into commercial service.

NIST—The National Institute of Standards and Technology of the United States Department of Commerce.

Out-of-order tag—A tag placed by the department on any weighing or measuring device that does not meet the specifications, tolerances, or other technical requirements for weighing and measuring devices that are set forth in NIST Handbook 44.

Person—Individuals, partnerships, corporations, and associations, and shall include the singular and the plural, except "service person" refers solely to individuals.

Registered service agency—Any agency firm company partnership corporation, or other entity that for hire award, commission, or any other payment of any kind installs, services, repairs or reconditions a commercial weighing or measuring device and that voluntarily registers as such with the department and identifies its individual service persons to the department.

Registered service person [service-man]—[Shall be construed to mean any] Any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and who voluntarily registers with the department to service and install weighing or measuring devices [himself as such with the Texas Department of Agriculture and who has the authority to remove out-of-order tags from rejected weighing or measuring devices or to place in service newly installed or reconditioned weighing or measuring devices of the class approved].

Sub-kit—An unbroken series of test weights that weighs a total of not less than one pound in avoirdupois units and whose smallest test weight weighs not more than 1/16 ounce or 0.005 pound.

Test kit—A collection of test weights that weighs a total of 31 pounds and that consists of one sub-kit at least two one-pound test weights, and any combination of other test weights that allows a scale of 31 pounds capacity or less to be tested in one-pound increments to capacity.

§15.24. Requirements for Registered Service Persons and Registered Service Agencies.

(a) Application.

(1) An individual or agency qualified by training or experience may apply for registration to install and service any or all classes of weighing and/or measuring devices on an application form supplied by the department. This form, duly signed and notarized, shall include certification by the applicant that the individual or agency:

(A) is fully qualified to install, service, repair, or recondition devices of all classes for which registration is sought;

(B) has in his or her possession or available for use, and will use, all necessary testing equipment and standards; and

(C) has full knowledge of all appropriate weights and measures laws, orders, rules, and regulations.

(2) An applicant shall also submit an affidavit as to the qualifications required in subsection (b) of this section, as required by the department.

(3) Application for registration shall be voluntary, but the department may reject or limit any application.

(b) Qualifications.

(1) To be registered, an applicant must possess the following minimum qualifications:

(A) completion of agency or factory training in the installation or servicing of each class of device that the applicant seeks to be registered to install or service;

(B) completion of a three-month general apprenticeship in each field of service in which the applicant seeks to be registered;

(C) passage prior to initial registration and every third year thereafter of a written test administered by the department; and

(D) ownership of or employment by an agency that owns test equipment that meets the standards for minimum equipment set out in subsection (d) of this section and that is certified by the department or by another city or state weights and measures laboratory that is certified by The National Institute of Standards and Technology.

(2) Training and apprenticeship credentials accepted by the department from a registered service person or an applicant for registration shall be transferable to that person if he or she changes employers from one service agency to another.

(c) Written tests.

(1) The department shall devise and administer a written test for each class of scale or meter that a service person may be registered to install or service.

(2) The department shall offer these tests on a regular schedule at the Austin metrology laboratory and at each of the department's regional offices.

(3) The passing score for each test shall be 70% or higher.

(4) No person may take a test more than once during any period of seven consecutive days.

(d) Minimum equipment.

(1) An applicant must have available sufficient standards and equipment to adequately test devices as set forth in the notes section of each applicable code in the most recent published edition of NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," and in the most recent published edition of NIST Publication 12, "Examination Procedures Outlines for Weighing and Measuring Devices."

(2) Minimum equipment for each class of device is as follows:

(A) Class 1. scales, capacity 100 pounds or less: one 31-pound test kit, and additional test weights capable of testing a scale of 100 pounds capacity or less to not less than 105% of its capacity;

(B) Class 2. scales, capacity more than 100 pounds but not more than 1,000 pounds: one 31-pound test kit, and additional test weights equal to 100 pounds or 50% of the capacity of the scale being tested, whichever is more;

(C) Class 3. scales, capacity more than 1,000 pounds but not more than 40,000 pounds: test weights equal to 500 pounds or 25% of the capacity of the scale being tested, whichever is more, and correction weights in sizes no larger than one-half the minimum graduation of any scale to be tested;

(D) Class 4. scales, capacity more than 40,000 pounds: test weights equal to 10,000 pounds or 10% of the capacity of the scale being tested, whichever is more, and correction weights in sizes no larger than one-half the minimum graduation of any scale to be tested;

(E) Class 5. liquid measuring devices, maximum flow rate 20 gallons per minute or less: one five-gallon test measure; and

(F) Class 6. liquid or liquefied petroleum gas (LPG) measuring devices, maximum flow rate more than 20 gallons per minute: one test measure whose capacity exceeds the amount of liquid delivered by the device in one minute at the maximum flow rate.

(3) Minimum equipment required under this section shall meet all applicable specifications contained in the most recent published edition of:

(A) NIST Handbook 105-1, "Specifications and Tolerances for Field Standard Weights (NIST Class F);"

(B) NIST Handbook 105-2, "Specifications and Tolerances for Field Standard Measuring Flasks;"

(C) NIST Handbook 105-3, "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards."

(4) No more than three service persons may be registered per 31-pound test kit or five-gallon test measure.

(5) Each service agency must have at least one copy of the most recent published edition of NIST Handbook 44 and Texas Weights and Measures Laws (Texas Agriculture Code, Chapter 13), and this chapter.

(e) Certificates of registration and registration cards.

(1) Service agency.

(A) The department shall review and evaluate the qualifications of each applicant service agency and shall issue to qualified applicants a certificate of registration, including an assigned registration number and other designations that identify the agency and that identify each class of device that the agency is authorized to place in service or return to service.

(B) The certificate of registration shall expire one year from the date of issuance or on the agency's anniversary date, whichever comes first.

(C) A separate application shall be submitted for each business location of the service agency.

(D) Each service agency shall have at least one registered service person in its employ at each registered business location.

(E) An out-of-state service agency shall designate an agent who resides in Texas on the form for this purpose provided by the department.

(F) A registered service agency shall notify the department in writing within 30 days of any change of address or change of name of the agency's registered business locations.

(G) A registered service agency shall notify the department in writing within 10 days of the termination of employment of a registered service person.

(2) Service person.

(A) The department shall review and evaluate the qualifications of each applicant service person and shall issue to qualified applicants a registration card, including an assigned registration number and designations that identify the service person, the service agency by which he or she is employed, and the types and capacities of device that the service person is authorized to place in service or return to service.

(B) The registration card shall expire one year from the date of issuance or on the anniversary date of the service person's registered service agency employer, whichever comes first.

(C) A registered service person must surrender his or her registration card to an officer or owner of the agency named in the service person's application immediately upon termination of employment with that agency.

(f) Privileges and responsibilities of a registrant.

(1) With respect to weighing and measuring devices of a type and capacity that a registrant is authorized to place in service or return to service, the registrant may:

(A) remove an out-of-order tag placed on a weighing or measuring device by the authority of the department;

(B) place in service, until such time as an official examination can a weighing or measuring device that has been officially rejected; and

(C) place in service, until such time as an official examination can be made, a new or used weighing or measuring device.

(2) A registrant shall install, repair, and adjust each device as closely as practicable to zero error.

(3) Each device placed into service shall meet all specifications set out in NIST Handbook 44, and the device shall be suitable for its intended use.

(g) New installation reports and out-of-order tags.

(1) The department shall furnish each registered agency with a supply of new installation report forms.

(2) Within 10 days of placing a device in commercial service, the registered service person who installed the device shall complete a new installation report for the device and submit the report to the Texas Department of Agriculture Weights and Measures Program, P.O. Box 12847, Austin, Texas 78711.

(3) Within 10 days of removing an out-of-order tag, the registered service person who removed the tag shall return the tag to the regional office of the Texas Department of Agriculture that issued the tag.

(4) Each new installation report and out-of-order tag shall include the registration number and signature of the service person who installed the device or removed the tag.

(h) Examination and calibration or certification of standards and testing equipment.

(1) At least annually, a registered service agency shall submit to the department for examination and certification all standards and testing equipment that are used, or are to be used, in servicing and testing weighing and measuring devices.

(2) No registered service agency or registered service person may use in servicing commercial weighing or measuring devices in this state any standards or testing equipment that has not been certified by the department, by a city weights and measures division approved by the department, or by another state weights and measures laboratory that is certified by NIST.

(3) A copy of any certificate of calibration of equipment certified by a city or another state weights and measures laboratory must be on file with the department.

(i) Suspension and revocation of registration.

(1) The department may suspend or revoke a certificate of registration or registration card at any time if a registrant fails to comply with a provision of this section or a provision of Texas Agriculture Code, Chapter 13, including, but not limited to:

(A) failure to have test equipment or standards certified;

(B) failure to use adequate testing equipment; or

(C) failure to adjust a commercial or law-enforcement device to comply with NIST Handbook 44 subsequent to service or repair.

(2) Before suspending or revoking a certificate of registration or registration card issued under this section, the department shall conduct a hearing on the proposed suspension or revocation. The decision of the department may be appealed in the same manner as contested cases under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Chapter 1 of this title (relating to General Practice and Procedure).

(3) The department may refer to the appropriate prosecuting attorney for prosecution under applicable civil and criminal codes any person who has violated or is violating any provision of this section or any provision of Texas Agriculture Code, Chapter 13.

§15.25. Tolerances and Specifications for Reference Standards and Field Standards.

(a) The specifications, tolerances, and other technical requirements for field standard weights as recommended by the **most recent published edition of National Institute of Standards and Technology** [National Bureau of Standards] publication 105-1 [Revised 1972], "Specifications and Tolerances for Field Standard Weights (NIST [NBS] Class F)," shall apply to all field standard weights in use in this state except insofar as specifically modified, amended, or rejected by a regulation issued by the Texas Department [Commissioner] of Agriculture. Available from United States Government Printing Office (USGPO), Washington, D.C. 20402.

(b) The specifications, tolerances, and other technical requirements for field standard measuring flasks as recommended by the **National Institute of Standards and Technology** [National Bureau of Standards] and expressed in the **most recent Published edition of NIST** [National Bureau of Standards] publication 105-2, "Specifications and Tolerances for Field Standard Measuring Flasks," shall apply to all field standard measuring flasks in use in this state except insofar as specifically modified, amended, or rejected by a regulation issued by the Texas Department [Commissioner] of Agriculture. Available from USGPO, Washington, D.C. 20402.

(c) The specifications, tolerances, and other technical requirements for field

standard metal volumetric standards as recommended by the National Institute of Standards and Technology [National Bureau of Standards] and expressed in the most recent published edition of NIST [National Bureau of Standards] publication 105-3, "Specifications and Tolerances for Graduated Neck Type [Metal] Volumetric Field Standards," shall apply to all field standard graduated neck type [metal] volumetric standards in use in this state except insofar as specifically modified, amended, or rejected by a regulation issued by the Texas Department [Commissioner] of Agriculture. Available from USGPO, Washington, D.C. 20402.

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 January 22, 1992.

TRD-9201084 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: March 2, 1992

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

◆ ◆ ◆
• 4 TAC §15.24

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

The Texas Department of Agriculture proposes the repeal of §15.24, concerning the requirements for registered servicemen. The purpose of this proposal is to allow for the adoption of an entirely new §15.24, which will improve the accuracy of weighing and measuring devices used in commercial transactions in Texas by setting standards for the scale- and meter-service industry.

James H. Eskew, coordinator for metrology labs, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state government as a result of enforcing or administering the repeal. There will be no fiscal or economic implications for local government or local employment as a result of enforcing or administering the repeal.

Mr. Eskew also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be greater professionalism in the service industry, and an improvement in the quality of scale and meter installations and repairs. No fiscal implications or economic costs to businesses or persons who are required to comply with the repeal is anticipated.

Comments may be submitted to James H. Eskew, Coordinator for Metrology Labs,

Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of Chapter 13, Texas Agriculture Code, concerning the sale and use of weights and measures and to supervise all weights and measures sold in this state.

◆ ◆ ◆
§15.24. Requirements for Registered Servicemen.

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 January 22, 1992.

TRD-9201083 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: March 2, 1992

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

◆ ◆ ◆
TITLE 16. ECONOMIC
REGULATION

Part II. Public Utility
Commission of Texas

Chapter 23. Substantive Rules
Customer Service and Protection

◆ ◆ ◆
• 16 TAC §23.51

The Public Utility Commission of Texas proposes an amendment to §23.51, concerning allowing level and average billing plans for submetered dwelling units. The proposed amendment will allow elderly and chronically ill tenants living on fixed incomes, who choose to participate in the level and average billing plans, to avoid high summer and winter electric bills. Under the average payment plan requested the 12-month averaging of bills would come from the tenant's history in each individual dwelling unit and would be updated with each month's billing. Each tenant's bills would adjust a small amount, each month, depending on the most recent billing. On the anniversary date of each lease, the account would be brought up-to-date and then automatically start over with lease renewal. Alternately, under a level payment plan eligible tenants would pay on a monthly basis a fixed billing rate one-twelfth of that tenant's estimated annual consumption at the appropriate rates, with provisions for quarterly adjustments as may be determined based on actual usage.

Utilization of the proposed plan would be optional to both the owner and to each individual resident within the complex. Additionally, no

interest charges would be included in the billings; any seasonal overcharges or undercharges would be carried by the owner of the complex.

The proposed billing methods supplements, rather than supplants, the collection methods set forth in subsection (e)(1)(G). The method of bill calculation will remain unchanged. As presently required, owners and managers will continue to be precluded from recovering more than the actual amount in which they are billed by the utility company. This rule change will provide owners merely with alternative methods of collection which will allow tenants to pay a fixed amount each month. This will insure tenants against fluctuating electric bills. The proposed rule would be entirely voluntary and identical to what is currently available to electric utilities. This method is encouraged of utilities and should be extended to residents of submetered dwelling units.

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

Mr. Brocato 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 availability of a billing method that will protect elderly and chronically ill tenants living on fixed incomes against fluctuating electric bills. There will be a no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposal (13 copies) may be submitted to Mary Ross McDonald, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 232S, Austin, Texas 78757. Comments should be submitted within 30 days after publication of the proposed section and should refer to Project Number 10843.

The amendment is proposed under Texas Civil Statutes, Article 1446d, which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction over submetering.

◆ ◆ ◆
§23.51. Utility Submetering.

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

(c) Billing. All rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued thereon, that electrical consumption, water consumption, or wastewater charges based on water consumption for all common areas and common facilities will be the responsibility of the owner and not of the tenant,

and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. Each owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary as approved by the commission to assure that the tenant is informed of his rights and the owner's responsibilities under this section of the substantive rules.

(1)-(6) (No change.)

(7) **Level and average payment plan.** Owners with seasonal usage or seasonal demands are encouraged to offer a level payment Plan or average payment plan to elderly or chronically ill tenants who may be on fixed incomes and to other tenants having similarly unique financial needs.

(A) The payment plan may be one of the following methods:

(i) a level payment plan allowing eligible tenants to pay on a monthly basis a fixed billing rate of one-twelfth of that tenant's estimated annual consumption at the appropriate rates, with provisions for quarterly adjustments as may be determined based on actual usage;

(ii) an average payment plan allowing tenants to pay on a monthly basis one-twelfth of the sum of that tenant's current months' consumption plus the previous 11 month's consumption (or an estimate thereof, for a new customer) at the appropriate customer class rates, plus a portion of any unbilled balance. Provisions for annual adjustments as may be determined based on actual usage shall be provided. If at the end of a year the owner determines that he has collected an amount different than he has been charged by the utility, the owner must refund any overcollection and may surcharge any undercollection over the next year.

(B) Under either of the plans outlined in section subparagraph (A) of this paragraph the owner is prohibited from charging the tenant any interest that may accrue. Any seasonal overcharges or undercharges will be carried by the owner of the complex.

(C) If a tenant does not fulfill the terms and obligations of a level payment agreement or an average payment plan, the owner shall have the right to disconnect service to that tenant pursuant to the disconnection rules provided elsewhere in these sections.

(D) The owner may collect a deposit from all tenants entering into

level payment plans or average payment plans: the deposit will not exceed an amount equivalent to one-sixth of the estimated annual billing. Notwithstanding any other provision in these sections, the owner may retain said deposit for the duration of the level or average payment plan; however, the owner shall pay such interest on the deposit as is provided elsewhere in these sections.

(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 January 23, 1992.

TRD-9201116

Mary Ross McDonald
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: March 2, 1992

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

◆ ◆ ◆
TITLE 19. EDUCATION
Part II. Texas Education Agency
Chapter 61. School Districts
Subchapter B. Waivers and Exemptions

• **19 TAC §61.30**

The Texas Education Agency (TEA) proposes an amendment to §61.30, concerning waivers and exemptions. Senate Bill 351, 72nd Legislature, moved the authority for general waivers from the board to the commissioner of education. The legislation, however, continued to place the authority to adopt rules concerning textbook waivers with the State Board of Education. Therefore, §61.30 must be amended to include these new statutory requirements.

Julian Shaddix, associate commissioner, field 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. Shaddix and Criss Cloudt, director for policy planning and evaluation, have 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 implementation of statutory requirements relating to textbook waivers. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin,

Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §11.273, which provides the State Board of Education with the authority to adopt rules relating to the granting of textbook waivers to school districts.

§61.30. Waivers and Exemptions from Rules or Laws.

(a) [General provisions.] In accordance with the Texas Education Code, §11.273, the commissioner of education [State Board of Education] may grant textbook waivers [and exemptions] to local school districts and campuses.

(b) [Requirement for a written plan.] A school district or campus shall apply for a waiver to use a textbook that is not included on the state-adopted multiple list. A waiver under this section shall be for the same number of years for which the textbooks for the subject or course are adopted by the State Board of Education. To qualify for the waiver and receive state funds, the school district or campus shall apply by March 1 preceding the first year of the state-adopted textbook cycle for that subject or course. This deadline is extended to April 1, 1992, for the 1991-1992 school year only. Each request for a textbook waiver by a local school district or campus under this section must contain the following components:

(1) a section that includes the local goals and/or achievement objectives, how each of the textbooks on the state-adopted multiple list inhibits student achievement, and how the textbook presented in the waiver request will enhance student achievement [, the statute or rule that inhibits student achievement, and how student achievement is inhibited by this requirement or prohibition]; and

[(2) a section that describes the proposed plan to be implemented in lieu of the current requirement;

[(3) a section that describes how the waiver will remove the inhibitions to student achievement; and

[(4) a section that describes how the district or campus will determine whether the proposed waiver is successful in removing the inhibitions;]

(2) [(5)] a section that describes and verifies that [how] the requirements of this section [are] were carried out through either the appropriate campus and/or district level decision process required by the

Texas Education Code, §21.7532 and §21.930. [This paragraph will become effective September 1, 1991.]

(c) Textbook waivers. A school district or campus shall apply for a waiver to use a textbook that is not included on the state-adopted multiple list. A waiver under this section shall be for the same number of years for which the textbooks for the subject or course are adopted by the State Board of Education.

(1) To qualify for the waiver and receive state funds, in addition to the filing of the written plan required in subsection (b) of this section, the school district or campus shall apply by March 1 preceding the first year of the state-adopted textbook cycle for that subject or course.]

(c)(2) The application submitted by [In addition to the written plan required by subsection (b) of this section,] a school district or campus shall provide the following information:

(1)(A) assurance of a six-year life expectancy of the textbook;

(2) (B) coverage of essential elements by the textbook and sources of supplementary materials to address essential elements not covered by the textbook to ensure compliance with the Texas Education Code, §11.273(e)(1);

(3)(C) involvement of campus instructional staff in the selection of the textbook.

(d)(3) Upon approval of the waiver, the school district or campus shall purchase the textbook.

(e) (4) The school district shall provide selected textbooks not on the state-adopted multiple list in special formats, such as, but not limited to, Braille, large print, audio, and Spanish language as required by law if they are needed by any students in the district who would use the textbook.

(f) (5) Student performance using the textbooks shall be reviewed on an annual basis using student testing and other performance data to determine whether the textbook is fulfilling the achievement objectives submitted to the commissioner [board] pursuant to the Texas Education Code, §11.273(b).

(g) Not more than (1.0%) of the state's annual budget for purchasing new textbooks will be allocated to fund textbooks requested through a waiver. The commissioner of education shall have the discretion to make the necessary adjustments to this limitation in order to address special circumstances resulting from waiver requests from large school districts.

(h) Criteria used to evaluate and approve textbooks waiver requests shall include the following:

(1) a clear demonstration by the district that the proposed alternative textbook will result in significant improvement of student performance;

(2) a clear designation of special student groups to be served, such as special campuses, academic groupings, selected grade levels, specific student populations; and

(3) other locally defined circumstances that address unique needs of the district or campus.

(i) Textbooks submitted for consideration but denied inclusion on the state-adopted multiple list will not be eligible for adoption under the waiver criteria. All publishers will be informed that if they submit a book for consideration by a textbook adoption committee and are denied inclusion on the state-adopted multiple list, their books will not be eligible for adoption through the waiver process.

(j) All textbooks submitted for approval under a waiver request must be in general publication and cannot be in any type of pre-publication format at the time of the application.

(k) If the State Board of Education does not include a textbook title for a subject or course which is eligible to receive a new textbook adoption, no waiver will be allowed in that area.

(l) If a district or campus orders textbooks from the state-adopted multiple list during an adoption cycle for a specific subject or course, the district or campus will not be eligible to receive state funding for a textbook waiver in that category for the life of that adoption.

(m) The commissioner of education shall provide the State Board of Education a report of all textbook waivers requested and granted.

(n)(6) Nothing in this section [rule] shall restrict the authority of a school district to purchase textbooks not adopted by the State Board of Education pursuant to the Texas Education Code, §12.01(d).

(o)(d) Exemptions.] Pursuant to the Texas Education Code, §11.273(d), a district or campus may be granted an exemption from a requirement or prohibition imposed by law or regulation, excluding textbook requirements, if:

(1) the district or campus has been granted a waiver of the requirement or prohibition for a consecutive three-year period; and

(2) the campus or district has fulfilled the achievement objectives submitted to the board pursuant to the Texas Education Code, §11.273(b).

(p) [(e) Assurances.] For any application, waiver or exemption request set forth in subsections (a)-(o)[(d)] of this section, each district or campus shall provide assurances that the requested waivers or exemptions do not apply to subjects and tasks in the Texas Education Code, §11.273(e)(1)-(12).

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 January 15, 1992.

TRD-9200989 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-9701

Subchapter G. School Facilities

• 19 TAC §§61.91-61.94

The Texas Education Agency (TEA) proposes new §§61.91-61.94, concerning emergency facility grant funds. The new sections implement policies governing the allocation of emergency facility grant funds.

Joe Wisnoski, senior director, resource planning and reports division, has determined that for the first five-year period the sections are in effect 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 will include the cost of hiring additional personnel to administer the grants as well as the \$50 million cost of the grants themselves. In addition, the agency is also responsible for the development of standards for facilities. Project personnel needed to implement these new programs include two architects with experience in the area of school construction at a cost of approximately \$84,000 per year. This includes salaries, fringe benefits, rent, and phone. An additional \$5,000 will be required in the first year to purchase furniture and computer equipment. This amount will be realized from a reduction of two positions in another agency function. The effect on local government (school districts) for the first five-year period will be the cost of the required matching grants necessary to qualify for state funds. The estimated amount of the matching grants is \$50 to \$100 million in local funds. However, districts are not under an obligation to in the program. To achieve the same results without the program, it is presumed that districts would have incurred \$50 million in additional expenses. There will be no fiscal implications for small businesses.

Mr. Wisnoski and Criss Cloudt, director for policy planning and evaluation, also have 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 buildings which are safer for students and teachers provided at reduced

cost to districts with limited financial resources. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §15.16(b), which provides the State Board of Education with the authority to establish procedures and qualifications for school districts who wish to obtain a facilities emergency grant.

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

Imminent threat—An immediate danger to students and staff due to either current exposure or high risk of exposure in emergency situation. Examples include, but are not limited to, exposed electrical hazards, current exposure to toxic chemicals through daily use in an unsafe environment, structural damage that endangers the immediate integrity of the building, and blind corridors posing a substantial threat in emergency exit situations. Examples would not include: failure of pre-existing buildings to meet safety standards for new buildings, asbestos abatement under a pre-existing abatement plan, inadequate handicap accessibility.

Project—A set of activities to repair, renovate, or add to existing facilities to address a specific, limited need. As an example, the addition of vent hoods in the chemistry labs would be considered a project. Within the same building, the addition of fire escapes for exit from a blind corridor would be considered a separate project. Districts may propose multiple projects per building.

§61.92. Project Categorization.

(a) Each project will be categorized into one of the following groups based on information provided by the district:

(1) Category 1: imminent health and safety in an area where instruction takes place on a regular basis during the day;

(2) Category 2: imminent health and safety in instructional support area;

(3) Category 3: imminent health and safety in noninstructional area;

(4) Category 4: additional instructional space requirement;

(5) Category 5: health and safety concern, not imminent or in other areas;

(6) Category 6: other.

(b) Projects will be eligible for funding based on the categories listed in subsection (a) of this section. Only after all project needs have been funded in Category 1 will projects in subsequent categories be considered for funding.

(c) Projects without sufficient supporting documentation of need may be categorized as "other." Documentation should be from a professional with responsibility for assessment of the particular condition. Examples include, but are not limited to, citations in accreditation reports, receipt of waivers for class size limits, written assessments by a registered engineer or licensed architect, and written citation for a local or state fire safety official.

§61.93. Project Prioritization.

(a) Projects within each category will be given a priority based on three factors:

(1) district rank of average total effective tax rate from 1990-1992; defined as tax levy or tax collections divided by the State Property Tax Board value used in state aid distribution in those years. This factor will receive a weight of 20%;

(2) district rank of property wealth per weighted student in the 1991-1992 school year; defined as the State Property Tax Board value used in state aid distribution in that year divided by the number of weighted students for guaranteed yield purposes. This factor will receive a weight of 50%;

(3) district rank of growth rate of 1989-1990 through 1994-1995, defined as the projected average daily attendance for 1994-1995 divided by the attendance in 1989-1990. This factor will receive a weight of 30%.

(b) These rankings will each be rated to create a composite score for the district. The composite score will be the result of the formula: $.2(\text{rank of tax rate}) + .5(\text{rank of district wealth}) + .3(\text{rank of growth rate})$. The composite scores will then be rank ordered to determine priorities for funding projects.

§61.94. General Requirements.

(a) The facilities emergency grants will be administered on a shared basis in the same manner as the foundation school program.

(b) The amount of award will depend on the project cost and the wealth of

the school district. Districts will share in the cost of projects in relationship to the ability to generate funds under the guaranteed yield formula for 1992-1993.

(c) The percentage of project cost to be funded by the school district will be determined by the following formula $(1 - ((\text{District Total Property Value for Guaranteed Yield} / \text{District Weighted Students for Guaranteed Yield}) / 10000) / 22.50)$. This formula provides that the local share of the project cost will be based on the state guaranteed yield level, and will result in a formula that requires districts to pay a higher percentage of the project cost as district wealth increases.

(d) There are not limits proposed on the amount of award for a single project or to a single district.

(e) Districts will have until August 31, 1993, to raise their local share of project cost. Grants will be funded upon certification of the local share by the district.

(f) Projects funded under this program must be completed by February 28, 1995. Funds granted must be used for the projects for which the grants were made.

(g) School districts must apply for funding no later than a date set by the commissioner. Documentation of need for the proposed project will be required.

(h) Upon review and stratification of projects according to the categories and priorities listed in this section, districts will be notified of the awards by the commissioner.

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 January 15, 1992.

TRD-9200990 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-9701

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Chapter 67. Instructional Resources

Subchapter A. State Textbook Program

State Adoption, Acquisition, and Custody of Textbooks

• 19 TAC §67.85

The Texas Education Agency (TEA) proposes an amendment to §67.85, concerning instructional resources. The amendment im-

plements changes to the textbook adoption and distribution process.

Dr. Thomas Anderson, deputy commissioner for school support 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.

Dr. Anderson and Criss Cloudt, director, policy planning and evaluation, 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 implementation of policies that strive to ensure that students throughout the state receive error-free textbooks. The effect on fiscal implications for small businesses will be dependent on those situations in which the commissioner requires an independent editor. A small publisher would experience additional costs in this situation; however, the additional cost would only be incurred if substantial errors are found, and there is no basis for estimating how frequently errors will be made by publishers. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §12.16, which provides the State Board of Education with the authority to implement rules under which textbooks are adopted and introduced in the public schools of the state.

§67.85. Procedures Governing Violations of the Statutes of the Rules, Procedural Irregularities, [or] Failure to Meet Established [Deadlines]. Deadlines, and Errors in Textbooks and Systems.

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

(e) An error is:

(1) a verifiable mistake in a matter of fact;

(2) a defect, such as a misspelled word, typographical error, or inconsistency between a student edition and its teacher edition; and

(3) any other error which, as determined by the commissioner of education, prevents a textbooks or system from being classroom ready.

(f) Upon discovery of errors other than those in the publisher's hand-corrected copies, the commissioner of education may require the publisher to retain at the publisher's expense an independent editor, subject to the com-

missioner's approval, to review the textbook and or system. The independent editor shall provide the commissioner with a list of corrections (in addition to those identified in the hand-corrections) necessary to make the textbook or system free of errors and/or to certify that the textbook or system is free of errors and is classroom ready.

(g) A publisher may be subject to a penalty as determined by the commissioner of education for any error confirmed by agency staff which is discovered after a publisher's hand-corrected copies of textbooks and/or systems have been filed according to the scheduled in the proclamation. The commissioner of education may impose penalties in increments to be determined by the commissioner based on the number of errors.

(h) If a textbook or system submitted for consideration is found to contain significant errors as defined in subsection (e) of this section which were not identified in the hand-corrected sample, the commissioner of education may recommend that said textbook or system not be eligible for adoption by the State Board of Education.

(i) If, subsequent to adoption and during the first two years of use, the commissioner of education determines that any adopted textbooks or systems contain significant errors as defined in subsection (e) of this section, said textbooks or system components shall be revised to correct the errors and replaced in schools by the publisher at no cost to the state.

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 January 15, 1992.

TRD-9200987

Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-9701

Chapter 75. Curriculum

Subchapter H. Promotion and Alternatives to Social Promotion

• 19 TAC §75.191

The Texas Education Agency (TEA) proposes an amendment to §75.191, concerning grading and reporting requirements. Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any

rules adopted on these matters must occur under the new rule-making relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 133, Pupil-School Relations, have been reviewed by the board and are being repealed in a separate submission. A new Chapter 133 is being proposed in a separate submission. However, former §133.41, Prohibited Withholding, is being repropoed as an amendment to Chapter 75 to more approximately locate the section will rules relating to grading and reporting requirements.

Marvin Veselka, associate commissioner for curriculum and assessment, 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. Veselka and Criss Cloudt, director for policy planning and evaluation, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clearer more concise statement of the agency's rule authority. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§75.191. Grading and Reporting Requirements.

(a)-(h) (No change.)

(i) A pupil's report cards or records shall not be withheld because of unpaid compulsory, school district assessed, fees or charges which are not authorized by law.

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 January 15, 1992.

TRD-9200978

Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: March 3, 1992

Subchapter K. Extracurricular Activities

• 19 TAC §75.411, §75.412

The Texas Education Agency (TEA) proposes new §75.411 and §75.412, concerning extracurricular activities for students. Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rule-making relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. Section 97.113 and §97.115 in Chapter 97, Planning and Accreditation, have been reviewed by the board and are being repealed in a separate submission. The sections are being re-proposed in Chapter 75 to more appropriately locate them with rules relating to grading and reporting requirements. The remaining sections of Chapter 97 are scheduled to be reviewed by the board during February 1992 and will be published at that time.

Mr. Marvin Veselka, associate commissioner for curriculum and assessment, 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. Veselka and Criss Cloudt, director for policy planning and evaluation, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer more concise statement of the agency's rule authority. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new sections are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§75.411. Student Absences for Extracurricular or Other Activities.

(a) School districts shall not schedule, nor permit students to participate in, any school related or sanctioned activities on or off campus that would require, per-

mit, or allow a student to be absent from class in any course more than 10 times during the 175-day school year (full-year course). Noninstructional school activities must be held outside of minimum 55-minute scheduled academic class periods in grades nine-12, 45-minute scheduled academic class periods in grades seven-eight, and six hours of academic class periods in grades four-six, or be included in one of the six allowable shortened schedules referred to in §105.71 of this title (relating to Days of Operation Required).

(b) A school district shall inform the commissioner of education of specific exceptions to the 10 absences limitation stated in subsection (a) of this section on behalf of individual students who are competing in UIL-sponsored activities. This exception must be based on circumstances which are unforeseen and which result from the students earning the right to compete at post-UIL-district levels. Exceptions shall not exceed a total of five additional absences per year. Participants in post-district competitions sponsored by other organizations approved by the commissioner of education shall also be eligible for exceptions in accordance with this subsection. Exceptions will not be granted just to allow students who have not earned the right to compete at the post-district level to participate in more district-level activities than permitted under the 10 absences limitation.

(c) A student in grades seven-12 may participate in extracurricular activities on or off campus at the beginning of the school year only if the student has earned the cumulative number of credits in state-approved courses indicated in this subsection:

(1) beginning at the seventh grade year—have been promoted from the sixth grade to the seventh;

(2) beginning at the eighth grade year—have been promoted from the seventh grade to the eighth;

(3) beginning at the ninth grade year—have been promoted from the eighth grade to the ninth;

(4) beginning of the 10th grade year—at least five credits toward graduation;

(5) beginning of the 11th grade year—at least nine credits toward graduation for the 1985-1986 school year and 10 credits each year thereafter; and

(6) beginning of the 12th grade year—at least 13 credits toward graduation for the 1985-1986 school year, at least 14 credits for the 1986-1987 school year, and 15 credits each year thereafter.

(d) In order to be eligible to participate in an extracurricular activity event for a six-week period following the initial six weeks period of a school year, a student must not have a recorded grade average

lower than 70 on a scale of 0 to 100 in any course for that preceding six weeks period.

(e) A student whose recorded six weeks grade average in any course is lower than 70 at the end of a six-week period shall be suspended from participation in any extracurricular activity event during succeeding six week periods until the end of a six-week period during which such student achieves a course grade average for that six weeks of at least 70 in each course, except the campus principal may remove this suspension if the class is identified as an honors class under the criteria stated in §75.152(d) of this title (relating to Advanced High School Program), or advanced class as follows:

(1) English language arts: English IV Academic (composition), English IV Academic (British Literature), World Literature, Creative/Imaginative Writing, Research/Technical Writing, Debate III, Public Speaking III;

(2) other languages: Other Languages III, Advanced Languages I-IV;

(3) social studies: Advanced Social Science Problems;

(4) fine arts: Art IV, Theatre Arts IV, Band IV, Orchestra IV, Choral Music IV, Stage Band IV, and Music Theory I-II;

(5) mathematics: Trigonometry, Elementary Analysis, Analytic Geometry, Pre-Calculus, Linear Algebra, Calculus; and

(6) science: Physics, Physics II, Chemistry II, Biology II.

(f) For the 1984-1985 school year, suspensions shall begin with the second six weeks period of the spring semester based on a student's earning a grade lower than 70 in any course taken during the first six weeks of the spring semester. Such suspension shall become effective seven days after the last day of the six weeks period during which the grade lower than 70 was earned.

(g) A student who has been suspended from extracurricular activity events pursuant to subsections (e) and (f) of this section shall also be suspended from out-of-school practice in such extracurricular activities until such suspension from participation has been lifted.

(h) At the end of any six weeks period in which a student has attained a course grade average for that six weeks of 70 or more in each course taken, any suspension from participating in extracurricular activities and/or suspension of out-of-school practice of extracurricular activities shall be removed.

(i) All UIL-sponsored activities are sanctioned as school-related activities and therefore come under the provisions of this

section. The governing boards at the highest state level of any other organizations requiring student participation which causes a student to miss a class during the school day must request approval, in writing, from the commissioner of education. If approval of the organization is granted and the local board of trustees concurs, student participation in the organization's activities will be subject to all provisions of this section. If approval is not granted, any absences incurred by the student will be considered unexcused.

(j) School districts shall develop a policy which implements this section, including a provision regulating the number of times a student may be absent pursuant to subsection (a) of this section during any one semester course.

(k) Limitations on practice and performance shall be as follows.

(1) School districts shall adopt policies limiting extracurricular activities from the beginning of the school week through the end of the school week (excluding holidays) by scheduling no more than one contest or performance per activity per student and by limiting practice outside the school day to a maximum of eight hours per school week per activity except as specified in paragraph (2) of this subsection. For schools with limited facilities, exceptions may be made to the one contest or performance per activity by the commissioner of education. The rule concerning scheduling one contest or performance per activity per student per school week shall be effective September 1, 1985.

(2) Tournaments and post-season competition, as well as contests postponed by weather or public disaster, may also be scheduled during the school week. This subsection shall apply only to the University Interscholastic League and other organizations sanctioned by the Central Education Agency in accordance with subsection (i) of this section.

(1) At the end of the first three weeks of a grading period, the school district shall send notice of progress to the parent or guardian of a student whose grade average in any class is lower than 70 or whose grade average is deemed borderline by the district. The district shall make such information available to sponsors of extracurricular activities in which the student participates. The notice should stipulate that the student will have the remainder of the six weeks period to bring the grade up to 70 or above and that the student will be suspended from extracurricular activities if the grade is not brought up to 70 or above by the end of the six weeks period. The district may require any student who falls within this subsection to attend tutorial sessions.

(m) Definitions of "curricular," "cocurricular," and "extracurricular" activities shall be as follows.

(1) Curricular activities occur within the regular school day and constitute the delivery of instruction as specified in this chapter.

(2) Cocurricular activities are an extension of classroom instruction in which participation is by the entire class or a significant portion thereof. They relate directly to and enhance student learning of essential elements through participation, demonstration, illustration, and observation. Cocurricular activities are included in the teacher's instructional plan and are conducted by or supervised by a classroom teacher or other educational professional such as a librarian, school nurse, counselor, or administrator. Subsection (e) of this section shall not prevent students from participating in after-school cocurricular activities. Absences for participation in cocurricular activities that require a student to miss a class other than the sponsoring class or course shall be counted under the 10-day rule.

(3) Extracurricular activities are school-sponsored activities which are not directly related to instruction of the essential elements, but they may have an indirect relation to some areas of the curriculum. They offer worthwhile and significant contributions to a student's personal, physical, and social development. Participation in extracurricular activities is a privilege and not a right, and students must meet specific requirements in order to participate. Activities may include, but are not limited to, performance, contests, demonstrations, displays, and club activities.

(n) For the fourth six-week period in the 1984-1985 school year only, a student may participate in extracurricular or other activities on or off campus that require absences from one or more classes only if:

(1) the student has and maintains a 70 average or better in at least four of the courses in which that student is enrolled for the prior and current semester;

(2) that student does not miss any class in which the student does not have and maintain at least a 70 average; and

(3) only courses approved for state graduation credit by the State Board of Education may be counted toward the number in which the student must have and maintain a 70 average or better. Courses in physical education or competitive athletics may not be counted.

(o) For the fourth six-week period in the 1984-1985 school year only, students shall be eligible to participate in University Interscholastic League activities in accordance with current University Interscholastic League rules and this subsection.

(1) The student is eligible to participate in a league varsity contest as a

representative of a participant school if he or she meets current University Interscholastic League requirements and the following:

(A) the student has attended more than one-half of the preceding semester and passed at least four one-half credit courses, including at least three separate courses, as required by the University Interscholastic League constitution and contest rules, §411, as it was in effect for the fall semester of the 1984-1985 school year;

(B) the student is passing at least four one-half credit courses or the equivalent, including at least three separate courses, as required by the University Interscholastic League constitution and contest rules, §412, as it was in effect for the fall semester of the 1984-1985 school year.

(2) To determine if a student is passing at least four one-half credit courses, the student's work from the beginning of the semester to seven days before the contest (or 30 days before a music contest) in which the student intends to participate must be considered.

§75.412. Competitive Athletics During the School Day. Schools limit individual students to one period during the regularly scheduled school day for practice of interschool competitive athletics and for programs in which body conditioning, training, or other activities in one of the team sports is the objective of the teacher and students.

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 January 15, 1992.

TRD-9200979
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Chapter 97. Planning and Accreditation

Subchapter D. Additional Accreditation Regulations

Additional Accreditation Regulations

• 19 TAC §97.113, §97.115

(Editor's note: The text of the following sections proposed for repeal will not be published. The

sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeals of §97.113 and §97.115, concerning planning and accreditation. Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. Section 97.113 and §97.115 have been reviewed by the board and are being repealed and re-proposed in Chapter 75 to more appropriately locate them with rules relating to grading and reporting requirements. The remaining sections of Chapter 97 are scheduled to be reviewed by the board during February 1992 and will be published at that time.

Criss Cloudt, director, policy planning and evaluation, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Cloudt also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer, more concise statement of the agency's rule authority. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeals are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this Title 19, Texas Administrative Code, relating to public education.

§97.113. Student Absences for Extracurricular or Other Activities.

§97.115. Competitive Athletics During the School Day.

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 January 15, 1992.

TRD-9200988 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: March 3, 1992

For further information, please call: (512) 463-9701

Chapter 133. Pupil-School Relations

The Texas Education Agency (TEA) proposes the repeal of §§133.1, 133.21-133.28, 133.41, 133.61, 133.101, 133.121 and 133.122, concerning pupil-school relations. Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rule-making relationship between the SBOE and the Legislative Education Board. The review of rules is to be conducted over a three-year period. All sections of Chapter 133 have been reviewed by the board and are being repealed. A new Chapter 133 is being proposed in a separate submission.

Criss Cloudt, policy planning and evaluation, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Criss Cloudt also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer more concise statement of the agency's rule authority. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

Subchapter A. General Welfare of Pupils

• 19 TAC §133.1

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

The repeal is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§133.1. Responsibility.

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 January 15, 1992.

TRD-9200981 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter B. Discipline Management

• 19 TAC §§133.21-133.28

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

The repeals are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§133.21. Notice Given by Regulations.

§133.22. Discipline Management Programs.

§133.23. Recommended Training Program.

§133.24. Teacher Training in Discipline Management.

§133.25. Implementation Time Lines.

§133.26. Suspension of Students: Removal to Alternative Education Programs.

§133.27. Expulsion.

§133.28. Discipline of Handicapped Students.

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

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TRD-9200982 Criss Cloudt
Director, Planning
Coordination
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For further information, please call: (512) 463-9701

Subchapter C. Pupil's Report Cards or Records

• 19 TAC §133.41

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

The repeal is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§133.41. Prohibited Withholding.

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 January 15, 1992.

TRD-9200983 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter D. Married Pupils

• 19 TAC §133.61

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

The repeal is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§133.61. Rights.

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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Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter F. Exemptions From Instruction

• 19 TAC §133.101

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

The repeal is proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§133.101. Physiology and Hygiene.

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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Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter G. Pupil Organizations

• 19 TAC §133.121, §133.122

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

The repeals are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75 of this title, relating to public education.

§133.121. Prohibited Pupil Participation.

§133.122. Nonprohibited Pupil Participation.

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 January 15, 1992.

TRD-9200986 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-9701

• 19 TAC §§133.21-133.24

The Texas Education Agency (TEA) proposes new §§133.21-133.24, concerning pupil-school relations. Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rule-making relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 133 have been reviewed by the board and are being repealed in a separate submission.

Dr. Jay Cummings, deputy commissioner for programs and instructions, 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.

Dr. Cummings and Criss Cloudt, director, policy planning and evaluation, also have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer more concise statement of the agency's rule authority. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new sections are proposed under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, of this title relating to public education.

§133.21. Discipline Management Programs. Content of approved programs is as follows.

(1) The board of trustees shall provide in the contents of the plan for the following.

(A) The board of trustees shall provide in the contents of the plan the development of a code of student conduct that, at a minimum, includes rules, procedures, and expectations related to conduct and specifies the consequences of violating the code. The school district shall explain what it will consider to be "serious" and "persistent" misbehavior in its discipline management program and student code of conduct. The code of student conduct shall initially be published and distributed to all administrators, teachers, parents, and stu-

dents. Thereafter, the code of student conduct shall be provided for each newly employed administrator and teacher and newly enrolled student, parent or guardian, and to others upon request. The discipline management plan of each district shall provide for procedures to communicate the provisions of the code of student conduct to parents and all interested parties. Changes during the year in the code of student conduct shall be published and distributed to students in a timely manner.

(B) The district shall provide annually for signed statements by each student's parent that the parent understands and consents to the responsibilities outlined in the district's student code of conduct.

(2) The district's discipline management plan shall specify who may serve as the student's representative, the district's hearing officer at any hearing required by the Texas Education Code, §21.301 and §21.3011, and shall set forth the district's notice and hearing procedures.

(3) The school district's outline of its alternative educational program shall be included in its discipline management plan.

§133.22. Suspension of Students: Removal to Alternative Education Programs.

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

(1) Class disruption—Any behavior which violates the rules of a particular classroom and interferes with the teacher's opportunity to present material or the other students' opportunity to concentrate on the material or their assignments.

(2) Community-based alternative school—A program for students who have been removed from the students' assigned campus for disciplinary reasons and placed in an alternative education program operated by a school district in cooperation with other school districts, juvenile agencies, or other governmental entities.

(3) Discipline management technique—Any action which is intended to promote proper behavior and/or discourage misconduct other than suspension or expulsion including, but not limited to, rewards and incentives, student-teacher conferences, parent-teacher conferences, teacher redirection of student behavior, negative assertion, logical consequences, setting limits, I-messages, student contracts, active listening, reality therapy, suspension of extracurricular activities, detention, etc.

(4) Expulsion—suspension of a student from school for more than six school days within a semester.

(5) Home-based instruction—An unsupervised alternative education program in which students are provided assignments to be complete at home. Except for students who are provided home-based instruction pursuant to the Texas Education Code, §21.3011(h) and §133.23(b)(3) of this title (relating to Expulsion), students may not be assigned to home-based instruction or be suspended for more than a combined total of six school days in a semester.

(6) In-school suspension program—an on-campus setting for students who commit disciplinary infractions, where the student continues to receive instruction in each course to the extent possible.

(7) Parents—Includes single parent, legal guardian, or person in lawful control.

(8) School-based strategies—A program(s) which uses interactive strategies between school personnel and the community and/or state agencies to provide a full array of services for the prevention of or intervention in delinquent behavior or students. These services may include conflict resolution, alternative education, student assistance teams, peer jury or fairness committee, behavioral contracts, contingency education plans, and alternatives to expulsion.

(9) School-community guidance center—A program that meets the requirements for school-community guidance centers as specified under the Texas Education Code; §§21.601-21.606.

(10) School property—Any property owned by the school district or over which the school district or its personnel exert lawful authority, including property visited by students in connection with a school-sponsored activity, such as a field trip or extracurricular activity.

(11) Suspension—A deprivation of educational services for disciplinary reasons for a period not to exceed six school days in a semester. A district may adopt a policy to provide students with assignments during the period of suspension. Such a policy shall not interfere with a teacher's ability to instruct the remaining students in that class. In all cases, students must be given an opportunity to complete assignments pursuant to the Texas Education Code, §21.301(h).

(12) Transfer to a different school campus—The removal of a student from his or her assigned campus to another campus within the same school district.

(b) Grade adjustment. A district that imposes a grade adjustment for work made up by a student who has been suspended shall adopt a policy that ensures consistent application.

(c) Emergency removal.

(1) The board of trustees or its designee may remove a student from his or her regular classes or from school district premises for nondisciplinary health, safety, or welfare reasons whenever the board or its designee determines that an emergency exists for doing so. Reasons which may be considered an emergency include, but are not limited to, the fact that the student is under the influence of alcohol or drugs, highly agitated, or suffering from any other condition which temporarily threatens his or her welfare, other individuals' welfare, or the efficient operation of the school. Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other propose authority, including, but not limited to, law enforcement officers and medical personnel. Such removal must be for as short a time as is reasonable under the circumstances, but is limited to five consecutive school days.

(2) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

§133.23. Expulsion.

(a) Definition. The definitions set forth in §133.22 of this title (relating to Suspension of Students; Removal to Alternative Education Programs) are applicable to this section.

(b) Expulsion procedure.

(1) The student may only be expelled by written order setting the term of the expulsion.

(2) Before the expulsion, the board or its designee must provide the student a hearing at which the student is afforded requisite due process which shall include the following:

(A) prior notice of the charges and the proposed sanctions as to afford a reasonable opportunity for preparation;

(B) right to a full and fair hearing before the board or its designee;

(C) right to an adult representative or legal counsel;

(D) opportunity to testify and to present evidence and witnesses in his or her defense; and

(E) opportunity to examine the evidence presented by the school administration and to question the administrator's witnesses.

(3) Pending the expulsion hearing, a student may be placed in home-based instruction or in an alternative education program provided that the hearing shall be held within seven school days from the date of the offense. The date of the hearing may be deferred beyond the seven days only by the mutual consent of the student's parent or guardian and the district's representative.

§133.24. Discipline of Students with Handicaps. Disciplinary actions regarding students with handicaps shall be in accordance with §133.22 of this title (relating to Suspension of Students: Removal of Alternative Education Programs) and §133.23 of this title (relating to Expulsion) except as noted in this section.

(1) Students with handicaps. For the purpose of this section, a student with a handicap is a student who has been evaluated in accordance with 34 Code of Federal Regulations, §§300.530-300.534 and §89.233 of this title (relating to Comprehensive Individual Assessment) and determined by an admission, review, and dismissal (ARD) committee as meeting the eligibility criteria for orthopedically handicapped, other health impaired, auditorially handicapped, visually handicapped, deaf-blind, mentally retarded, emotionally disturbed, learning disabled, speech handicapped, autistic, multiply handicapped, or traumatic brain injured, who because of those impairments needs special education and related services.

(2) Suspension or removal to an alternative education program.

(A) Students with handicaps may be suspended in the same manner as students without handicaps for a period not to exceed six school days or removed to an alternative education program for a period not to exceed 10 consecutive school days.

(B) Students with handicaps may not be suspended for more than six days or removed to an alternative education program for more than 10 days unless the ARD committee first determines whether the alleged behavior in question was related to the handicapping condition. If the ARD committee determines there is a connection, they must also determine what action is appropriate.

(C) The term of a student's removal to an alternative education program shall be assessed in accordance with the requirements of the Texas Education Code,

§21.301(d) and 34 Code of Federal Regulations §300.513 (relating to child's status during proceedings). However, removal for more than 10 consecutive school days may be effected only through ARD committee action, subject to the parents' right to appeal.

(3) Emergency removal.

(A) Emergency removal of a student with a handicap from a class or school for health, safety, or welfare reasons may only be done for compelling reasons as noted in §133.22(c) of this title and shall not exceed five consecutive school days except as set out in subparagraphs (B) and (C) of this paragraph. Any student who is removed from school premises pursuant to this subsection and who is in a condition that threatens his own welfare or the welfare of others must be released to the student's parent, a representative of the parent, or other proper authority, including, but not limited to, law enforcement officers and medical personnel.

(B) Removal under this section is intended to be used in emergency situations only and consecutive five school day removals are prohibited unless the ARD committee determines that the student poses an immediate threat to the safety of himself or herself or others, or disrupts the safety of the learning environment.

(C) If the ARD committee determines that a student is dangerous pursuant to subparagraph (B) of this paragraph, but the parents appeal the decision pursuant to the Individuals with Disabilities Education Act procedures and refuse to permit a change of placement, the school must obtain immediate injunctive relief from a state or federal court in order to remove the student for more than 10 consecutive days.

(D) The district shall make reasonable efforts to notify the parent prior to removing a student from school premises under this subsection. If the parent cannot be notified prior to removal, the parent must be notified as soon as possible after the removal and the reasons for it.

(4) Removals totaling 16 school days. When the total number of days a student with a handicap is removed to an alternative education program, suspended, or removed for emergency reasons totals 16 school days in any one school year, an ARD committee review of the student's IEP shall be conducted unless such removal is warranted in the student's discipline management plan specified in the student's IEP.

(5) Sanctions specified in students' IEP. The requirements of §133.22 of

this title and paragraphs (2) and (3) of this subsection shall not apply to disciplinary sanctions implemented in accordance with specifications in the student's IEP. If the student's IEP contains disciplinary sanctions and is not being challenged in an administrative or court appeal pursuant to the Individuals with Disabilities Education Act, then those sanctions in the IEP should be followed rather than the requirements of §133.22 of this title and paragraphs (2) and (3) of this subsection.

(6) Expulsion of students with handicaps.

(A) Expulsion may be effected for a student with a handicap who is engaging in conduct which would warrant such action for a student without handicaps under §133.23 of this title only if the ARD committee determines the misconduct is not related to the handicapping condition or inappropriate placement.

(B) The exclusion of a student with a handicap from his or her current placement, pending appeal of an expulsion, may not exceed 10 days without ARD committee action (subject to the parents' rights to appeal under the Individuals with Disabilities Education Act and the status quo provisions of 34 Code of Federal Regulations, §300.513) to determine appropriate services in the interim.

(C) In determining whether a student's disruptive behavior was related to a student's handicapping condition, the ARD committee shall base its decision on currently effective evaluation and assessment data and on review of the current IEP documentation rather than on established eligibility or previous committee decisions. The committee shall consider whether the student's behavior indicates the need for new assessment or evaluation data. Unless the parents agree otherwise, the student must be returned to his or her current placement after 10 days while additional assessments are being conducted.

(D) The ARD committee shall determine the instructional and related services to be provided during the time of expulsion. The student's IEP shall include goals and objectives designed to assist in returning the student to school and preventing significant regression.

(E) If the ARD committee determines that the student's disruptive behavior is related to the handicapping condition or inappropriate placement, the student shall not be expelled. If the disruptive behavior on the part of the student indicates an inappropriate placement, the ARD com-

mittee shall review the placement and recommend alternatives.

(F) If the ARD committee determines that the behavior was related to the handicapping condition, then the ARD committee shall:

(i) rewrite the IEP to address the behavioral and educational needs of the student; or

(ii) when appropriate, consider the extension of an emergency removal pursuant to paragraph (3)(B) of this subsection.

(7) Parent participation in ARD committee meetings. The provisions of §89.222(d) of this title (relating to Parent Participation in ARD Committee Meetings) and 34 Code of Federal Regulations, §300.513 (relating to child's status during proceedings) are applicable in circumstances arising under this section.

(8) Referral for assessment. Local officials should be aware that persistent discipline problems or disruptive conduct exhibited by a student who has not previously been a discipline problem might warrant referral for assessment. However, a regular education student is not entitled to avoid disciplinary action pending any assessment.

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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Director, Planning
Coordination
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For further information, please call: (512) 463-9701

Chapter 175. Proprietary Schools and Veterans Education

The Texas Education Agency (TEA) proposes the repeal of §§175.1, 175.2, and 175.101, concerning proprietary schools and veterans education. The repeal of the sections is necessary to implement changes resulting from the passage of recent legislation included in Senate Bill 757 and House Bill 2885 as passed by the 72nd Legislature. The chapter currently contains provisions related to commercial driving schools, proprietary schools, and veterans education. The chapter is being repealed and repropounded as two separate chapters, one specifically addressing proprietary schools and veterans education and another pertaining to driver training schools.

Dee Bednar, senior director, proprietary schools, veterans education, and driver training, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Bednar and Criss Cloudt, director for policy planning and evaluation, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a clearer more concise statement of rules relating to proprietary and drivers education schools and veterans education. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. Proprietary School Advisory Commission

• 19 TAC §175.1-175.2

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

The repeals are proposed under Senate Bill 757, and House Bill 2885 as passed by the 72nd Legislature, which provides the State Board of Education with the authority to adopt policies, regulations, and rules necessary for carrying out the provisions of the Texas Proprietary School Act.

§175.1. Proprietary School Advisory Commission.

§175.2. Guidelines for Proprietary Schools.

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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Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter D. Veterans Approval for Proprietary Schools

• 19 TAC §175.101

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

The repeal is proposed under Senate Bill 757, and House Bill 2885 as passed by the 72nd Legislature, which provides the State Board of Education with the authority to adopt policies, regulations, and rules necessary for carrying out the provisions of the Texas Proprietary School Act.

§175.101. Accredited and Nonaccredited Programs.

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 January 15, 1992.

TRD-9200972 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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The Texas Education Agency (TEA) proposes new §§175.1, 175.3, and 175.101, concerning proprietary schools and veterans education. The new sections implement changes resulting from the passage of recent legislation included in Senate Bill 757 and House Bill 2885 as passed by the 72nd Legislature.

Dee Bednar, senior director, proprietary schools, veterans education, and driver training, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government can not be determined due to the inability to estimate the decreased in number of proprietary schools, as well as the impact this decrease will have on the total revenue generated from annual renewal fees. There will be no fiscal implications for local government.

Ms. Bednar and Criss Cloudt, director policy planning and evaluation, also have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of statutory provisions designed to regulate the proprietary schools and ensure consumer protection. The 72nd Legislature changed the amount of the fee from a sliding scale with set increments to one based on .3% of gross income. Therefore, the fiscal implications for

small businesses will vary depending on the gross income from student tuition and fees for each business. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. Proprietary School Advisory Commission

• 19 TAC §175.1, §175.3

The new sections are proposed under Senate Bill 757, and House Bill 2885 as passed by the 72nd Legislature, which provides the State Board of Education with the authority to adopt policies, regulations, and rules necessary for carrying out the provisions of the Texas Proprietary School Act.

§175.1. Proprietary School Advisory Commission.

(a) The Proprietary School Advisory Commission shall function in accordance with applicable statutes (reference the Texas Education Code, Chapter 32).

(b) As it functions in an advisory capacity, the Proprietary School Advisory Commission is assisted by the staff of the Division of Proprietary Schools and Veterans Education, the administrator, and the commissioner of education.

(c) If a member fails to attend two of the three statutory meetings in a calendar year, possible removal of that member must be considered at the next statutory meeting. That member may be recommended to the commissioner for removal by a two-thirds vote of the commission members present and voting.

(d) Any change which results in failure to maintain eligibility requirements of a person for a particular position on the commission shall cause a vacancy in that position.

(e) The administrator or administrator's designee, with the advice of the chairman of the proprietary school advisory commission, shall prepare and submit to each member of the commission, prior to each meeting, a copy of the proposed agenda for the commission meeting.

(1) Members of the commission may request that items be placed on the agenda in either of the following ways.

(A) A request that an item be placed on the agenda for a subsequent meeting may be made at a meeting of the commission. The discussion of the request must be in accordance with Texas Civil Statutes, Article 6252-17, §3(A) (a), Notice of Meetings.

(B) A request may be submitted in writing to the administrator or to the administrator's designee. The request should include all documents and other supporting materials as appropriate related to the item which the requestor wishes to have considered by the commission.

(2) Requests for the public for items to be placed on the agenda shall be submitted in writing to the administrator or to the administrator's designee. The request should include all documents and other supporting materials as appropriate related to the item which the requestor wishes to have considered by the commission.

§175.3. Memorandum of Understanding for Regulation of Proprietary Schools. Senate Bill 417 of the 71st Legislature requires the Central Education Agency to execute a memorandum of understanding with the Texas Guaranteed Student Loan Corporation and each state agency regulating proprietary schools. The purpose of the memorandum is to reduce default rates at the regulated proprietary schools and to improve the overall quality of the programs operated by the schools. That memorandum of understanding is adopted by reference as an official rule. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m. except on holidays, Saturdays, and Sundays, at the Central Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

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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Director, Planning
Coordination
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Subchapter D. Veterans Approval for Proprietary Schools

• 19 TAC §175.101

The new section is proposed under Senate Bill 757, and House Bill 2885 as passed by

the 72nd Legislature, which provides the State Board of Education with the authority to adopt policies, regulations, and rules necessary for carrying out the provisions of the Texas Proprietary School Act.

§175.101. Accredited and Nonaccredited Programs. Proprietary schools desiring approval of a program or programs to train veterans and other eligible persons under the provisions of 38 United States Code Chapter 34 and 38 United States Code Chapter 35 may make application for such approval as follows.

(1) Approval of nonaccredited programs. Nonaccredited programs may be approved under the provisions of 38 United States Code, §1776.

(2) Approval of accredited programs. Programs which are accredited by a nationally recognized accrediting agency or association as defined in 38 United States Code, §1775(a) may be approved under the provisions of 38 United States Code, §1775, provided that the criteria set forth in 38 United States Code, §1776 are also met.

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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Director, Planning
Coordination
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Chapter 176. Driver Training Schools

The Texas Education Agency (TEA) proposes new § 176.1 and §176.10-176. 34, concerning driver training schools. The new sections implement changes resulting from the passage of recent legislation included in Senate Bill 757 and House Bill 2885 as passed by the 72nd Legislature, 1991.

Dee Bednar, senior director, proprietary schools, veterans education, and driver training, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated loss in revenue of \$75,238 for each year from 1992-1996. The loss is the result of the elimination of renewal fees for schools offering driving safety programs. Since schools will no longer be required to permit individuals who solicit or enroll students, the initial and renewal representative application fees were eliminated. It is projected that even with this reduction there will be sufficient revenue gen-

erated to maintain the current level of operation. There will be no fiscal implications for local government. It is anticipated that compliance with the sections by small businesses will result in a cost savings since schools will no longer be required to maintain copies of driving safety exams, only retain exam scores. There will be no adverse effect on small businesses due to this change and no increase in the cost per employee; hour of labor; or \$100 of sales. A sample of driving safety and driver education schools contacted by the agency revealed estimated savings to small businesses ranged from \$50 to \$2,500 per year. There is no differentiation in the cost of compliance for small businesses versus large businesses.

Ms. Bednar and Criss Cloudt, director, policy planning and evaluation have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the improvement of driver knowledge and skills through the licensing and regulation of driver training schools and driver training instructors in Texas. The anticipated economic cost to persons who are required to comply with the proposed sections will increase from \$25 to \$37.50 each for approximately 3,200 instructors. Since tests are no longer required to obtain a driver training instructor license, travel to the education service centers or Austin is no longer necessary. The impact of this savings to persons has not been included in this projection.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter A. Driver Training School Advisory Commission

• 19 TAC §176.1

The new sections are proposed under Senate Bill 757 and House Bill 2885 as passed by the 72nd legislature, 1991, which provides the State Board of Education with the authority to adopt rules necessary to carry out the Texas Driver and Traffic Safety Education Act.

§176.1. Driver Training School Advisory Commission.

(a) As it functions in an advisory capacity, the Driver Training School Advisory Commission is assisted by the staff of the Division of Proprietary Schools, Veterans Education and Driver Training, the division director, and the commissioner of education.

(b) If a member fails to attend two of the three statutory meetings in a calendar

year, possible removal of that member must be considered at the next statutory meeting. That member may be recommended to the commissioner for removal by a two-thirds vote of the commission members present and voting.

(c) Any change which results in failure to maintain eligibility requirements of a person for a particular position on the commission shall cause a vacancy in that position.

(d) A majority of the members shall elect a chairperson and vice-chairperson to serve a two-year term of office. The vice-chair serves in the absence of the chair.

(e) Prior to each meeting, the commissioner, or the commissioner's designee, with the advice of the chairman of the Driver Training School Advisory Commission, shall prepare and submit to each member of the commission of a copy of the proposed agenda for the commission meeting.

(1) Members of the commission may request that items be placed on the agenda in either of the following ways.

(A) A request that an item be placed on the agenda for a subsequent meeting may be made at a meeting of the commission. The discussion of the request must be in accordance with Texas Civil Statutes, Article 6252-17, §3(A) (a), Notice of Meetings.

(B) A request may be submitted in writing to the commissioner or to the commissioner's designee. The request should include all documents and other supporting materials as appropriate related to the item which the requestor wishes to have considered by the commission.

(2) Requests from the public for items to be placed on the agenda shall be submitted in writing to the commissioner or to the commissioner's designee. The request should include all documents and other supporting materials as appropriate related to the item which the requestor wishes to have considered by the commission.

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 January 15, 1992.

TRD-9200991 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-9701



Subchapter B. Minimum Standards for Operation of Texas Driver Training Schools

• 19 TAC §§176.10-176.34

The new sections are proposed under Senate Bill 757 and House Bill 2885 as passed by the 72nd Legislature, 1991, which provides the State Board of Education with the authority to adopt rules necessary to carry out the Texas Driver and Traffic Safety Education Act.

§176.10. General Information.

(a) Minimum standards of operation must be maintained by all schools to ensure educational courses are of high quality which will be of benefit to the student, the school, and the state and to fulfill the purposes and objectives of the Texas Driver and Traffic Safety Education Act. The observance and maintenance of these standards are the responsibility of each school for inherent advantage to the school itself and for the common good of all of the driving public.

(b) The Texas Education Agency will evaluate each school according to the standards of practice set forth in this section, appropriate laws, and State Board of Education rules. The complete picture presented by the entire educational, promotional, and ethical character of the school will receive consideration in the agency's evaluation.

(c) Every effort will be made to evaluate fairly and impartially each driver training school application for licensure to solicit students in Texas for the purpose of providing driver education and driving safety courses of instruction. The Texas Education Agency will endeavor to provide an effective and constructive application of the law and standards of practice adopted for regulating driver training schools.

(d) The Texas Education Agency will assist all schools and the school directors under its jurisdiction, whenever possible, in complying with the provisions of the law and standards of practice. Inquiries or requests for information should be directed to the Texas Education Agency, Austin.

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

Advertising—Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to arouse a desire to patronize that school and/or course.

Agency—The Central Education Agency also known as the Texas Education Agency.

Change of ownership of a school—A change in the control of the school. Any agreement to transfer the control of a school is considered to be a change of ownership. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

Commissioner—The commissioner of education or a person knowledgeable in the administration of regulating driver training schools and designated by the commissioner to administer this Act.

Course owner or primary consignee facilities—The address provided to the agency as the location to which the course owner or primary consignee stores records and uniform certificates of completion. These facilities may be a licensed school.

Course provider—A person, also known as course owner or consignee, who has created, produced, or copyrighted a course curriculum designed to improve licensed driver competency and driver performance levels.

Director—The person designated by the commissioner to carry out the functions and regulations governing the driver training schools and hereinafter referred to as director of the Division of Proprietary Schools, Veterans Education, and Driver Training.

Division—The Division of Proprietary Schools, Veterans Education, and Driver Training of the Texas Education Agency responsible for executing the provisions of the law, rules, regulations, and standards as contained in this chapter.

Good reputation—A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last 10 years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own a school currently in violation of the legal requirements; has never owned a school with habitual violations; has never owned a school with violations including, but not limited to, refund refunds; or

(E) the person has not falsified or withheld material information from representatives of the agency; and

(F) instructors shall have no misdemeanor or felony convictions involving driving while intoxicated over the past 10 years.

Instructor trainer—A driver training instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

New course—A course is considered to be new when it has not been offered previously or has been offered and then discontinued and/or the content or lessons of the course have been changed 25% or more.

Owner—Includes:

(A) in the case of a school owned by an individual, that individual;

(B) in the case of a school owned by a partnership, all full, silent, and limited partners;

(C) in the case of a school owned by a corporation, the corporation, its directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10% of the total of the issued and outstanding shares.

Teen and teenage—Eligible students of driver education who are at least 14 years of age when the classroom phase begins and who will be at least 15 years of age at the time the classroom phase ends.

Uniform certificate of course completion—This term encompasses all parts of a certificate with the same serial number.

Week—Seven calendar days.

§176.12. Exemptions.

(a) Schools desiring to be considered exempt from regulation as authorized by Texas Civil Statutes, §7, Article 4413(29c), shall request an exemption in writing and provide any information deemed necessary to the director to determine exempt status.

(b) Any school granted exempt status may be required to provide information or be visited by representatives of the agency in order to ensure continued opera-

tion in compliance with the exemption provisions.

(c) Schools desiring an exemption from this Act on the basis of being otherwise regulated and approved under any other state law must show that all of the driver training courses are so regulated.

(d) Contracts with schools otherwise regulated and approved. The driver education course shall be eligible for the exception under Texas Civil Statutes, Article 4413(29c), §7(c)(5), when the driver training school contracts with schools to provide instruction in compliance with the following.

(1) Classroom instruction shall be at the school and all behind-the-wheel instruction shall originate from the school or at the driving school.

(2) Driver training schools shall contract with the school and not with the individual student.

(3) The school shall collect fees for the course from the students and pay the driver training school in accordance with terms of the contract. Driver training schools shall not collect any monies from the students.

(4) The driver education affidavit which verifies that an approved driver education course has been satisfactorily completed shall be signed by the driver training school instructor on the line designated as "Signature of Driver Education Instructor." The chief school official or service center director of the school that has contracted the instruction to the driver training school shall sign or cause a stamped signature to be affixed to the driver education affidavit.

§176.13. School Licensure.

(a) Application. An application for a driver training school license shall be made on forms supplied by the agency.

(b) Bond requirements. In the case of an original or a change of owner application, an original bond shall be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form provided by the agency.

(c) Verification of ownership.

(1) In the case of an original or change of owner application, the owner of the school shall provide verification of ownership which includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The director may require additional evidence as is deemed necessary to verify ownership.

(2) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The director may require additional evidence as is deemed necessary to verify that no change of ownership has occurred.

(d) Effective date of the driver training school license. The effective date of the driver training school license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(e) Purchase of school. A person or persons purchasing a licensed driver training school shall comply with all the requirements for securing an original license. In addition, copies of the executed sales contract(s), bill(s) of sale, deed(s), and all other instruments necessary to transfer ownership of the school shall be submitted to the agency. The contract or any instrument transferring the ownership of the school shall include the following.

(1) The purchaser shall assume all refund liabilities incurred by the seller or any former owner prior to the transfer of ownership.

(2) The sale of the school shall be subject to approval by the agency.

(3) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(f) New location.

(1) The director shall be notified of any change of address within three working days prior to the move.

(2) A complete application for a driver training school license to reflect a new location shall be submitted to the agency and include all documents designated by the commissioner as being necessary with the appropriate fee. The license may be issued after the new facilities have been inspected and the complete application is approved.

(g) Renewal of driver training school license. A complete application for the renewal of a license shall be submitted prior to the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) properly executed bond or a properly executed continuation agreement for the bond currently approved by and on file with the agency; and

(4) any other revisions or evidence of which the school has been notified

in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(h) Notification of legal action. All schools shall notify the director in writing of any legal action which may concern the operation of or filed against the school, its officers, any owner, or any school instructor within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

§176.14. Driving Safety Course-Extension Locations.

(a) All extensions shall be registered and approved prior to offering a driving safety course.

(b) Schools desiring to conduct extensions shall:

(1) make application for registration of each extension on the registration form supplied by the commissioner and shall include all applicable fees;

(2) submit dates of course offerings, locations, class schedules, and scheduled instructor's name and license number at least 30 days before teaching a course. Exceptions to this requirement may be granted by the commissioner on an individual basis;

(3) notify the agency within 30 days prior to the discontinuance of an extension. Notification shall include a statement of assurance to the effect that verification and retrieval of all uniform certificates of completion provided to the extension have been accomplished;

(4) provide an instructional staff roster for each extension, which shall be updated quarterly, on a form provided by the agency. Changes to the instructional staff roster shall not require payment of an additional extension registration fee; and

(5) be responsible for maintaining records pertaining to the extensions, which include, but are not limited to:

(A) information pertaining to completed examinations for driving safety courses offered at the extensions;

(B) contracts for courses provided at the extensions; and

(C) any documentation which is not forwarded to the course owner or primary consignee.

(c) The school shall receive notification of the approved registered extensions from the director. A copy of the notification

shall be made by the school and forwarded to each extension. The extension shall maintain the copy of the notice for examination by the agency.

(d) The extension shall have permanent physical and mailing addresses that are provided to the agency. Any changes to the permanent address shall require submission of a registration application and fee. Changes to the mailing address shall not require payment of the fee.

(e) An extension may provide instruction at multiple classroom addresses. All such addresses shall be provided to the agency on a form supplied by the commissioner. Changes in classroom addresses shall not require submission of a new registration application or fee.

(f) Every extension shall have an agency-approved administrative staff member who shall serve as the person responsible for submitting documentation to the school from the extension.

(g) All contacts by the agency with extensions, except on-site investigations, shall be made through the licensed school. A violation of the law or rules by an extension constitutes a violation by the school.

(h) An extension which chooses to offer more than one school's approved driving safety course shall be registered and approved for each school. Procedures shall be developed by the course owners or primary consignees for the courses being offered and submitted to the agency for approval to ensure that a system for issuing uniform certificates of completion for an extension that offers multiple courses is established.

(i) All extension registrations are contingent on the school license and shall be subject to denial or revocation if such action is taken against the license of the school which has responsibility for the extension.

§176.15. Applications from Small Businesses.

(a) Time periods. Applications from small businesses for driver training school licenses and school directors shall be processed in accordance with the following time periods.

(1) The first period is a time from the receipt of an application to the date of issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time periods for each application are:

(A) initial driver training school license-30 days;

(B) renewed driver training school license-60 days;

(C) change in owner driver training school license-60 days; and

(D) school directors-20 days.

(2) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time periods for each application are:

(A) initial driver training school license-30 days;

(B) renewed driver training school license-30 days;

(C) change in owner driver training school license-30 days;

(D) school directors (approval contingent on issuance of school's license)-30 days; and

(E) school directors (approval not contingent on issuance of school's license)-20 days.

(b) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in subsection (a) of this section, the applicant has the right to request of the director full reimbursement of all filing fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for driver training school licenses and school directors as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(c) Appeal. If the request for full reimbursement authorized by subsection (b) of this section is denied, the applicant may

then request a hearing by appealing to the commissioner of education for a resolution of the dispute. The appeal will be processed in the same manner as other appeals involving driver training schools pursuant to Texas Civil Statutes, Article 4413(29c) and Chapter 157 of this title (relating to Hearings and Appeals).

§176.16. Driver Training School Responsibility for Employees.

(a) All instruction in a driving safety course shall be performed by agency-licensed instructors except a student instructor may teach the 16 hours necessary for licensing under the direction and in the presence of a licensed driver training instructor trainer who has been trained in the curriculum being instructed. If a licensed instructor enters or leaves the employment of any driver training school or extension, the school director shall within five days notify the director on forms furnished by the commissioner indicating the name, address, and license number of the school and the instructor, the date of employment or the termination date, and the reason for termination.

(b) No driver training school owner-operator or manager shall:

(1) permit any individual to give classroom instruction or behind-the-wheel instruction at the school or any extension location unless the individual has a valid current driver training instructor's license issued by the agency, except as provided in subsection (a) of this section;

(2) allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, or drug as those terms are defined in Texas Civil Statutes, Article 67011-1;

(3) wear or permit to be worn any uniform resembling the uniform worn by Department of Public Safety or other law enforcement employees, unless the person is performing a direct duty of the agency authorizing the individual to wear the uniform; or

(4) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course.

(c) For the purposes of Texas Civil Statutes, Article 4413(29c) and this chapter, each driver training instructor employed by or associated with any driver training school shall be deemed an agent of the driver training school, and the school shall share the responsibility for all acts performed by the instructor which are within the scope of the employment and which occur during the course of the employment.

§176.17. School Directors and Administrative Staff Members.

(a) Each school shall designate one person as the school director.

(1) Duties. The school director shall be responsible for all actions related to day-to-day operation and administration of the school, which includes supervising instructors, organizing and scheduling classes, maintaining the school plant, maintaining proper administrative records, and signing documents which require the signature of the chief school official.

(2) Qualifications. The person designated as the school director shall have either:

(A) a baccalaureate degree from an accredited institution of higher learning (four-year college or university); successful completion of six semester hours of driver education and/or driving safety courses; and one year of paid experience in administration, supervision, or management of a driver training school; or

(B) a combined total of five years of higher education and administrative/management experience; or

(C) a current license as a driver training instructor, and qualified to teach one or more of the school's courses for at least three of the five preceding years.

(b) During any period when the school director is required to be absent from the school, the owner shall designate an acting school director. The acting school director is not required to pay an application fee nor submit an application for approval to the agency. An acting school director may be designated for a maximum of two months.

(1) Duties. The acting school director shall perform all the functions of, and assume the authority of, the school director in the absence of that person.

(2) Qualifications. The acting school director shall have a high school diploma, GED, or equivalent, or be a licensed driver training instructor.

(c) An administrative staff member shall be designated by the school director for each registered extension.

(1) Duties. The administrative staff member shall perform all the administrative functions of the extension.

(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent, or be a licensed driver training instructor.

(d) An individual shall be approved by the agency as the school director or administrative staff member before employment as such.

(e) The school director, acting school director, or administrative staff member for the extension shall serve as a liaison person during any announced compliance visit by the agency.

(f) Violations at the school may result in revocation of the approval of the school director and/or the administrative staff member.

§176.18. Driver Training Instructor License.

(a) Application for licensing as driver training instructor shall be made on forms supplied by the agency. A person is qualified to apply for a driver training instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's license for the preceding five years in the areas for which the individual is to teach.

(b) A person applying for an original driver training instructor's license shall submit to the agency the following:

(1) complete application as provided by the commissioner;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the director; and

(4) any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driver training instructor license may qualify for the following endorsements.

(1) Driver education teacher.

(A) The application shall include a current, valid Texas teacher's certificate with a driver education endorsement and proof of successful completion of all state examinations issued by the agency to the applicant, or that the applicant has complied with all the necessary documentation as determined by the appropriate division of the agency.

(B) Responsibilities of a driver education teacher include:

(i) instruction and administration of multiphase driver education to teens and adults; and

(ii) instruction of the agency-approved teaching assistant study program at an education service center.

(2) Teaching assistant/teaching assistant-full.

(A) The application shall include a valid teaching assistant certificate issued by the appropriate division of the agency.

(B) All teaching assistants are allowed to assist certified teachers in the classroom provided the certified teacher is present. The duties are limited to the following areas:

(i) grading or handing out written assignments;

(ii) operating audio-visual equipment; and

(iii) providing behind-the-wheel instruction for teens and adults. A teaching assistant-full, if properly certified to do so, may also teach simulator and multi-car driving range training.

(3) Adult driver education instructor.

(A) The application shall include evidence of one of the following:

(i) Texas teacher certificate with driver education endorsement;

(ii) a teaching assistant certificate; or

(iii) completion of an agency-approved 40-clock-hour adult instructor development course conducted by a licensed adult driver education instructor trainer.

(B) Responsibilities of an adult driver education instructor include any classroom or behind-the-wheel instruction for adults.

(4) Adult driver education instructor trainer.

(A) The application shall include evidence of one of the following:

(i) Texas teacher certificate with driver education endorsement;

(ii) a teaching assistant certificate and 50 hours of verifiable behind-the-wheel experience as a licensed adult driver education teacher; or

(iii) completion of an agency-approved 40-clock-hour adult instructor development course and 100 hours of verifiable behind-the-wheel experience as a licensed adult driver education teacher.

(B) The application shall also include a written statement signed by

the school owner which recommends that the instructor be licensed as an adult driver education instructor trainer.

(C) The responsibilities of an adult driver education instructor trainer include administering and instructing an agency-approved 40-clock-hour adult instructor development course and any classroom or behind-the-wheel instruction for adults.

(5) Driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training, covering techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and 16 hours of practical teaching in the same driving safety course.

(B) The responsibilities of a driving safety instructor include instructing an agency-approved driving safety course specific to the curriculum in which the individual is trained.

(6) Driving safety instructor trainer.

(A) The application shall include evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 80 hours of experience, exclusive of the 40-hour instructor development course, in the same driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 80 hours of experience, exclusive of the 40-hour instructor development course, in the same driving safety course for which the individual is to teach;

(iii) completion of an agency-approved 40-clock-hour driving safety instructor development course in the same driving safety course for which the individual is to teach and 400 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 80 hours shall be in the same driving safety course for which the individual is to teach; or

(iv) a statement signed by the driving safety course owner or primary consignee, if different than the applicant, recommending the instructor as an instructor trainer.

(B) The responsibilities include instructing an agency-approved driving safety course and signing as a driving safety instructor trainer for the 16 hours of

practice teaching required for driving safety instructor trainees.

(7) Instructor development course driving safety instructor trainer.

(A) The application shall include evidence of:

(i) completion of all the requirements for a driving safety instructor trainer or proof of authorship of an approved driving safety course; and

(ii) a statement signed by the driving safety course owner or primary consignee, if different than the applicant, recommending the instructor as an instructor development course instructor trainer.

(B) The responsibilities include instructing an agency-approved driving safety course, training individuals to teach an agency-approved driving safety course, and signing student instruction records for driving safety trainees.

(d) Renewal application for driver training instructor license.

(1) Application for renewal of an instructor license shall be made on a form provided by the commissioner and shall be accompanied by the annual instructor licensing fee.

(2) License renewal applications shall be postmarked at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed.

(e) All driver training instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) annual instructor licensing fee.

(f) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate driver training instructor license fee.

(g) The agency shall be notified of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(h) All instructors shall notify the director in writing of any legal action filed against the instructor within five working days of commencement of the legal action. The director may require a file-marked copy of the petition or complaint that has been filed with the court.

(i) The commissioner may suspend, revoke, or deny a license to any driver training instructor trainer or driver training instructor, upon determining that:

(1) the applicant or licensee has been convicted under the laws of this state, another state, or the United States of any felony, or an offense involving moral turpitude, or an offense of involuntary manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of the agency, are required to be of good moral character, and to deal honestly with courts and members of the public. Driver training instruction involves supervision of inexperienced drivers on public highways, and accurate recordkeeping and reporting for purpose of driver licensing, court documentation, and other purposes. In determining the present fitness of a person who has been convicted of a crime and in determining whether a criminal conviction directly relates to an occupation, the agency shall consider those factors stated in Texas Civil Statutes, Articles 6252-13c and 13d.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense, other than a felony, shall not be considered by the agency, under this paragraph, if a period of more than 10 years has elapsed since the date of the conviction or of the release of the person from the confinement or suspension imposed for that conviction, whichever is the later date.

(C) For the purposes of this paragraph, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation;

(ii) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(iii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) the applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs, or becomes incompetent to safely operate a motor vehi-

cle or conduct classroom or behind-the-wheel instruction properly;

(3) the license was improperly or erroneously issued;

(4) the applicant or licensee fails to comply with the rules and regulations of the agency, regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c);

(5) the instructor fails to follow procedures as prescribed in this chapter; or

(6) the applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Department of Public Safety administrative rules, 37 TAC §15.81, referring to criteria for driver improvement action, during the past two years, or that such action is needed to protect the students and motoring public.

§176.19. Courses of Instruction.

(a) This subchapter contains requirements for driving safety, driver education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens, reducing traffic violations, reducing traffic-related injuries, deaths, and economic losses, and motivating continuing development of traffic-related competencies.

(B) Minimum course content. A driving safety course shall include, as a minimum, materials adequate to address the following topics and to comply with the minimum time requirements for each topic and the course as a whole.

(i) Course introduction—minimum of 10 minutes (instructional objective—to orient students to the class):

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The traffic safety problem--minimum of 15 minutes (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution):

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) five leading causes of motor vehicle crashes in Texas as identified by the Department of Public Safety.

(iii) Factors influencing driver performance--minimum of 30 minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance):

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures--minimum of 30 minutes (instructional objectives--to identify the requirements of and the rationale for applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis):

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad

crossings;

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the Department of Public Safety on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XIII) other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments--minimum of 30 minutes (instructional objectives--to identify how special conditions affect driver and vehicle performance and to identify techniques for management of these conditions):

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control--minimum of 15 minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance):

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.)

(vii) Perceptual skills needed for driving--minimum of 30 minutes (instructional objective--to identify the factors of perception and how the factors affect driver performance):

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies--minimum of 50 minutes (instructional objective--to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses):

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision-making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors; and

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.)

(ix) Driving emergencies--minimum of 50 minutes (instructional objective--to identify common driving emergencies and their countermeasures):

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment—minimum of 20 minutes (instructional objective—to identify the rationale for having and using occupant restraints and protective equipment):

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive); and

(V) helmets and other protective equipment.

(xi) Alcohol and traffic safety—minimum of 50 minutes (instructional objective—to identify the effects of alcohol on roadway users):

(I) physiological;

(II) psychological;

(III) legal aspects;

(IV) synergistic; and

(V) countermeasures.

(xii) Comprehensive examination and summation—minimum of 15 minutes (This shall be the last unit of instruction.) The remaining required 55 minutes of instruction shall be allocated to topics, excluding clause (i) of this subparagraph, and this clause or to additional driving safety topics included in the approved curriculum guide.

(C) Course management. Approved driving safety courses shall be presented in compliance with the following.

(i) No more than 50 students per class in driving safety courses.

(ii) The total length of the course shall consist of a minimum of 480 minutes.

(iii) A minimum of 400 minutes of instruction is required.

(iv) Eighty minutes of time exclusive of the 400 minutes of in-

struction shall be dedicated to break periods. All break periods shall be provided prior to the comprehensive exam and course summary.

(v) Administrative procedures, such as enrollment, shall not be included in instructional time.

(vi) Courses conducted in a single day shall allow a minimum of 30 minutes for lunch.

(vii) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided prior to the last unit of the instructional day or the comprehensive exam, whichever is appropriate.

(D) Driving safety course guides. A course guide is a description of the content of the course and the techniques of instruction that will be used to present the course. The guide shall be bound into one unit or contained in a hole-punched notebook with a cover and a table of contents. To be approved for licensing each course owner or primary consignee shall submit as part of the application a course guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student conduct and attendance;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other handicaps;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course. A variety of relevant motion picture films, slides, videos, and/or tape recordings shall be used for at least 80 minutes but cannot be used in excess of 200 minutes of the 400 minutes of instruction. The list of resources may be included in a single list, or they may appear at the end of each instructional unit;

(vi) a clear identification of the order in which the units of instruction will be presented, and for each student the course shall be taught in the order identified in the approved application;

(vii) a description of the plan(s) under which the course will be presented;

(viii) units of instruction sufficient to present the topics identified in subparagraph (B) of this paragraph and any additional topics unique to the course. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objective(s) of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written, and oral discussion questions, etc.). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluation of the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructional unit's description. The evaluative technique may be used throughout the unit or at the end;

(ix) a completed form cross-referencing the instructional units to the topics identified in subparagraph (B) of this paragraph. A form to cross reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course guide. To be approved, each course owner or primary consignee shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) demonstration of desirable techniques of instruction by the instructor trainer;

(IV) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(V) time to be dedicated to each training lesson; and

(VI) a minimum of 800 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer;

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objective(s) of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material, i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions. When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluation of the comprehension level of the students relative to the instructional

unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructional unit's description. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course owner or primary consignee shall submit for approval as part of the application tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning handicaps and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised of courses providing alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student instructed in a driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided by the agency. The evaluation forms must be collected at the conclusion of each class and for a period of one year kept on file at the location of the school.

(H) Instructor performance. Driving safety course owners or primary consignees with more than one instructor shall submit a written plan describing how monitoring of instructor performance will be accomplished. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation, and the corrective action to be taken when instructors do not meet criteria established by the owner or primary consignee.

(I) Instructor inservice training. Schools shall submit a written plan for providing their instructors with inservice education. The plan shall identify techniques to be used to provide inservice training as needed to keep the instructors current in curriculum changes, course procedures, and State Board of Education rules. Instructors shall attend a minimum of six hours of inservice provided by the course owner or primary consignee every two years.

(J) State-level evaluation of driving safety courses. Each course owner or primary consignee shall collect adequate student data to enable the agency to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. For each student, each course owner or primary consignee shall collect and upon request provide to the agency the following data:

(i) complete legal name;
(ii) driver's license number;

(iii) date of birth; and

(iv) date of course completion. Information derived from the study of the data will be used by the agency to evaluate the state's overall driving safety course and as a part of the total evaluation of individual courses. The data, as prescribed by the agency shall be provided within a 30-day period 24 months subsequent to approval. The agency shall within 12 months of receiving the data conduct an evaluation of the driving safety courses in general and of each approved course. The evaluation shall be conducted relative to the pre-course and post-course driving records of the graduates.

(K) Innovative driving safety courses. Upon the written request of an applicant, the commissioner may approve the course structure of an innovative driving safety course which would not otherwise be in compliance with this chapter. The approval of an innovative driving safety course shall expire at the end of one year unless timely renewed. To renew the approval, an applicant must submit a renewal request and complete report at least 30 days prior to expiration. The renewal request and report must provide evidence acceptable to the commissioner of the accomplishment of the implementation plan and goals submitted for the previous year, and include an acceptable updated plan of implementation and statement of goals for the following year. A written request must include a report that provides the following:

(i) documentation of the developmental process;

(ii) the actual presentation that would be used;

(iii) justification demonstrating how the offered course would more completely satisfy the educational objectives of driving safety than a driving safety course that could be otherwise approved pursuant to this chapter;

(iv) a specific plan of implementation and statement of goals for the immediate year following approval;

(v) if a renewal request, an evaluation of the effectiveness of the course for the previous approved period; and

(vi) any other information requested by the commissioner to adequately review the presentation.

(2) Teenage driver education.

(A) A 14-year-old student who will be 15 years old before the classroom phase of the driver education course ends may receive classroom instruction. A 14-year-old shall not be given behind-the-wheel in-car instruction.

(B) Driver training schools instructing 14- to 18-year-old students shall meet the requirements promulgated in the state-approved curriculum guide for driver education, the "Standards for an Approved Course in Driver Education for Texas Schools," and this chapter.

(C) Driver training schools, who desire to instruct persons ages 14 to 18 years, shall provide classes with uniform beginning and ending dates. Students shall be enrolled and in attendance the class prior to the seventh hour of classroom instruction.

(i) Students shall proceed in a sequence approved by the director. The units of instruction shall meet the requirements of the approved curriculum guide.

(ii) Students shall receive classroom instruction directly from an agency-licensed and certified instructor who shall be in the classroom and available to students during the entire 32 hours of instruction including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(iii) Self-study assignments that present units outlined in the curriculum guide shall not exceed 15 minutes per clock hour of instruction and shall be presented to the entire class simultaneously.

(D) Each student under 18 years of age shall be provided with a driver education textbook currently adopted by the State Board of Education.

(E) A copy of the current edition of the Texas Drivers Handbook, motorcycle supplement, and/or agency-approved study material shall be furnished to each student enrolled in the classroom phase of the driver education course.

(F) The school director is responsible for ensuring that each driver education instructor is providing instruction as outlined in the most recent edition of the

"Standards for an Approved Course in Driver Education for Texas Schools" and the current state-approved curriculum guide. In addition, the school director is responsible for obtaining a current copy of the "Standards for an Approved Course in Driver Education for Texas Schools" and a current state-approved curriculum guide appropriate for the phase of instruction.

(G) A school may not permit more than 35 students per driver education class.

(H) When a student changes schools, interrupting the classroom phase of the driver education course, the school may grant credit for the hours completed, provided the student enters and completes within 90 days and completes a course comparable to that in which the student first enrolled. Any credit received shall be documented in the student file.

(I) The classroom phase of driver education shall be completed in no fewer than 20 and no more than 90 calendar days from the first day of class, with no more than two hours scheduled in one day. This shall not circumvent the attendance and progress policies.

(J) All behind-the-wheel instruction shall consist of actual driving practice while the motor vehicle is in motion or as provided for in the curriculum guide for driver education. No school shall permit a ratio of less than two students or more than four students per instructor, except as allowed by subparagraph (L)(iii) of this paragraph. The behind-the-wheel phase shall be completed in no less than 14 calendar days or more than 180 calendar days from the first actual driving lesson.

(K) A student must have a valid driver's license or instruction permit in the student's possession during behind-the-wheel instruction.

(L) Driver training schools are authorized exceptions to the standards for an approved course in driver education and the state-approved curriculum guide (driver education classroom and in-car instruction) as follows.

(i) The maximum amount of in-car instruction time permissible for a driver training school instructor to teach minors shall not exceed eight hours per day.

(ii) A student may receive two 30-minute sessions or one 60-minute session at the discretion of the instructor of behind-the-wheel in-car instruction per day. This does not remove the minimum require-

ment for seven hours of observation time or alter the 20-day minimum time frame for concurrent courses or the 14-day minimum time frame for in-car training courses as currently outlined in the agency-approved curriculum guide and the standards for an approved course in driver education.

(iii) In-car instruction may be provided for only one student in those instances where it is not practical to instruct more than one student or a hardship would result if scheduled instruction is not provided. Documentation shall be maintained to support the in-car instruction for one student.

(iv) Schools are not required to employ supervising teachers to supervise and evaluate teaching assistants in driver education courses.

(v) Motion picture films, slides, videos, tape recordings, and other media approved by the director that present concepts outlined in the curriculum guide may be used as part of the required clock hours of the 32 hours of classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required clock hours of instruction. Together, these shall not exceed 640 minutes of the total 32 clock hours.

(3) Instructor development courses.

(A) Instructors shall successfully complete 40 clock hours (50 minutes of instruction in a 60-minute period) in traffic safety education and driver training under the supervision of a driver training instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 40 clock hours of training excluding those clock hours approved by agency staff which may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the school and instructor trainer for each instructor-trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attach-

ment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(C) All student instruction records submitted for the agency-approved instructor development course shall be signed by the course owner or primary consignee. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at locations other than at the course owner or primary consignee facilities if such locations are approved classroom facilities of a licensed school or registered extension which are approved to offer the driving safety course being taught. The course shall be presented by a properly licensed instructor trainer.

(E) The driving safety course owner or primary consignee shall submit dates of instructor development course offerings, locations, class schedules, and scheduled instructor trainers' names and license numbers at least 30 days before the courses are offered.

(F) All adult driver education instructor development courses shall be taught at a licensed school approved to offer an adult driver education instructor development course. The course shall be taught by a properly licensed instructor trainer.

(G) Schools desiring to teach adult driver education instructor development courses shall either submit course offerings as a part of the school application or, if offered periodically, submit the dates and scheduled instructors' names and license numbers at least 30 days before teaching the course. The commissioner may grant exceptions to this rule on an individual basis.

(H) Minimum course content for adult driver education instructors will include 40 hours in the following subjects:

- (i) techniques of instruction—five hours:
 - (I) qualities of a competent instructor;
 - (II) the learning process;
 - (III) methods of teaching;

- (IV) development of habits;
- (V) demonstration teaching;
- (VI) use of instruction material;
- (VII) use of training aids;
- (VIII) course preparation and lesson plans;
- (IX) testing and evaluation; and
- (X) duration and frequency of lessons;
 - (i) personality factors affecting the driver and pedestrian—two hours:
 - (I) natural abilities;
 - (II) senses;
 - (III) mind and nerves;
 - (IV) bones and muscle;
 - (V) knowledge of vehicle, road, traffic, and self;
 - (VI) character:
 - (-a-) attitudes; and
 - (-b-) emotions;
 - (VII) reaction time;
 - (VIII) circumstances affecting personality:
 - (-a-) poisons—alcohol, other drugs, carbon monoxide;
 - (-b-) over-the-counter, prescription, and illegal drugs;
 - (-c-) diseases—heart ailments, epilepsy, diabetes, insanity; and
 - (-d-) fatigue—exhaustion, tension, monotony.
 - (iii) state laws relating to the operation of motor vehicles—six hours:
 - (I) registration of vehicles;

- (II) certificate of title;
- (III) operation of vehicles;
- (IV) uniform act;
- (V) miscellaneous offenses;
- (VI) driver's license; and
- (VII) safety responsibility. (The titles correspond to those used in the Texas Motor Vehicle Law book.);
 - (iv) driving procedures—eight hours:
 - (I) city driving;
 - (II) rural driving;
 - (III) night driving;
 - (IV) winter driving;
 - (V) mountain driving;
 - (VI) freeway driving;
 - (VII) driving in rain, fog, sandstorms, etc.;
 - (VIII) driving on slick roads and running off road;
 - (IX) traffic signs, markings, and signals;
 - (X) driver signals;
 - (XI) passing problems on two- and three-lane roadways;
 - (XII) proper passing procedures;
 - (XIII) proper use of rearview mirrors;
 - (XIV) vehicle braking and stopping distances;
 - (XV) following distances;

(XVI) right-of-way, when and how to yield it;

(XVII) vehicle acceleration and deceleration;

(XVIII) blowout hazards and recovery procedures;

(XIX) problems and procedures involving trucks and supersize motorized equipment; and

(XX) yielding right-of-way to emergency vehicles;

(v) physical forces affecting the motor vehicle in motion—three hours:

(I) forces of gravity;

(II) friction;

(III) acceleration, mass, and force;

(IV) inertia and centrifugal force;

(V) kinetic energy and momentum;

(VI) kinetic energy and braking; and

(VII) horsepower and acceleration;

(vi) highway characteristics—two hours:

(I) types of highways—primary, secondary, expressway, freeway, farm or ranch road;

(II) types of roadways—two-way two-lane, two-way three-lane, two-way multilane, two-way multilane divided, one-way multilane;

(III) parking;

(IV) freeway characteristics;

(V) traffic controls:

(-a-) signs—shape, color, location, importance;

(-b-) traffic marking—center line, lane lines, no pass

zone, transition markings, turn lane marking, stop lines, crosswalk lines, etc.; and

(VI) signals—classification location, type, timing;

(vii) the automobile—systems and maintenance—two hours:

(I) electrical—generator or alternator, battery, lighting, electric-powered equipment;

(II) cooling system;

(III) lubrication and fuel systems;

(IV) power train—engine, transmission, differential;

(V) brake system;

(VI) wheels and tires—caster, camber, toe-in, balance, inflation, tire condition, and care;

(VII) exhaust system;

(VIII) instruments and gauges;

(IX) compartment adjustments—seat, ventilation, mirrors, headrests, seat belts, and shoulder harness;

(X) starting the engine and warm-up procedures;

(XI) proper use of safety devices—door locks, seat belts, and shoulder harness, headrests, etc.; and

(XII) windshield wipers, heater, defroster;

(viii) behind-the-wheel elementary lessons (demonstration in appropriate vehicle and practice to be performed in presence of instructor)—hours:

(I) starting;

(II) steering;

(III) stopping;

(IV) shifting gears;

(V) backing;

(VI) turning—right and left; and

(VII) parking and starting on grade;

(ix) behind-the-wheel driving safety lessons (demonstration in appropriate vehicle and practice to be performed in presence of instructor)—six hours:

(I) developing good seeing habits;

(II) speed control;

(III) safe following;

(IV) lane driving and lane changing;

(V) intersections and right-of-way;

(VI) proper signaling;

(VII) correct turn procedures;

(VIII) detection of and handling problems—vehicle, cycle, pedestrian;

(IX) freeway driving—ramp use, entering, exiting, lane use, emergency stopping;

(X) parking procedures;

(XI) entering traffic from parked position; and

(XII) night driving;

(x) school and instructor licensing requirements—two hours:

(I) school licensing requirements;

(II) instructor licensing requirements;

(III) classroom and automotive equipment requirements;

(IV) required student records;

(V) contract requirements; and

(VI) department of instructors;

(xi) specialized training—two hours:

(I) students with physical, mental, or emotional handicaps;

(II) illiterate students;

(III) non-English-speaking students; and

(IV) habitual violators and problem drivers.

(I) Applicants shall complete 40 hours of training in the driving safety curriculum that shall be taught. Of the 40 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 16 hours shall consist of practical teaching.

(b) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner determines that the applicant fails to meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(c) The commissioner may revoke approval of an institution's course(s), including, but not limited to:

(1) any statement contained in the application for the course approval that is untrue; or

(2) when the institution has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

§176.20. Contracts-Students.

(a) No person shall be instructed, either theoretically or practically, or both, to operate or drive motor vehicles until after a written legal contract has been executed.

(b) All driver training school contracts shall contain at least the following:

(1) the student's full legal name and driver's license or social security number. If a student who is a minor is unable to provide a driver's license or social security number, the driver's license number or social security number of the parent shall be used;

(2) the full legal name and license number of the school and extension registration number, if appropriate;

(3) the specific course to be taught;

(4) a statement indicating the agreed total contract charges;

(5) terms of payment;

(6) number of classroom lessons;

(7) length of each lesson or course;

(8) the school's cancellation and refund policy;

(9) a statement indicating the specific location, date, and time that instruction is scheduled to begin and the date classroom instruction is scheduled to end;

(10) statements substantially as follows.

(A) "I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct."

(B) The school is prohibited from issuing a certificate of completion if the student has not met all of the requirements for course completion and the student should not accept a certificate under such circumstances.

(C) "I further realize that any grievances not resolved by the school may be forwarded to the Division of Proprietary Schools and Veterans Education, and Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-3547."

(D) If the course is driving safety, the statement required in subparagraph (C) of this paragraph shall include the name and address of the course provider.

(c) In addition to the items required for all driver training school contracts, all driver education student contracts shall contain the following:

(1) number of behind-the-wheel lessons;

(2) rate per lesson-classroom instruction or course;

(3) rate per lesson-behind-the-wheel instruction or course;

(4) rates for use of school car for road test (if extra charge is made);

(5) the signature of the school director, acting school director, or administrative staff member; and

(6) the student's signature, or if the student is less than 18 years of age, the

signature of the parent or guardian, except that the signature of the parent or guardian is not required for persons under age 18 who are, or have been, married or whose disabilities of minority have been removed generally by law. Instead, such persons shall:

(A) present a marriage certificate or a divorce decree (but not an annulment decree) or other satisfactory evidence of marriage or of having been married;

(B) present a court order showing removal of disabilities of minority; or

(C) present a notarized parental authorization.

(d) In addition to the items required for all driver training school contracts, all driving safety student contracts shall contain the following:

(1) signature and license number of the instructor; and

(2) signature of the student.

(e) Driving safety may use a group contract which includes more than one student's name.

(f) The original of the contract shall be given to each driver education student.

(g) A copy of each contract shall be a part of the student files maintained by all driver training schools.

(h) Schools shall submit proposed or amended contracts to the director, and those documents shall be approved prior to use by schools.

(i) Contracts for group instruction must meet all legal requirements.

§176.21. Tuition and Fees.

(a) All tuition, fees, and other charges shall be stated in the school's application for licensure and shall be disclosed to potential students prior to enrollment.

(b) The school shall submit method(s) of payment that are available to enrolling students.

(c) Students shall not be held liable for any tuition, fees, or other charges not previously disclosed to the director.

(d) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of the Texas Education Agency and acceptable to the director. Receipts shall be issued to the student. The funding source and the reason for the charges shall be clearly identified on both documents. Additionally, these records shall be posted and kept current.

§176.22. *Progress.* Appropriate standards shall be implemented to ascertain the progress of the students.

(1) Driver education.

(A) Progress standards shall meet the requirements of the currently adopted curriculum guide.

(B) Each school shall submit to the director for approval an established procedure to ensure that all students demonstrate an acceptable level of mastery of the essential elements for driver education. Mastery is a prerequisite to awarding a grade of 70 or above.

(C) Evidence of mastery shall be determined by one or more of the following methods:

- (i) unit tests;
- (ii) assignments;
- (iii) class participation;
- (iv) teacher observation;
- (v) skills performance

and
checklist.

(D) The progress evaluation record shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the currently approved course curriculum for driver education.

(2) Driving safety. Progress standards for driving safety shall meet the requirements as set forth in §176.19(a)(1)(F) of this title (relating to Courses of Instruction).

§176.23. *Attendance.* Appropriate standards, which include positive records of student attendance, shall be implemented to ascertain the attendance of the students.

(1) Driver education.

(A) Absence for a full-hour class period shall be charged when the student in driver education is not present for a full 55 minutes of a 60-minute period, which is considered the equivalent to one hour of instruction. Break periods shall be provided for each instructional hour and shall not be combined to shorten the course.

(B) The attendance policy shall stipulate that students who accumulate absences more than 25% of the scheduled

classroom hours for teenage driver education shall be terminated, and a refund shall be totally consummated within 30 days. The student whose enrollment is terminated for violations of the attendance policy may not reenter before the start of the next new class.

(C) The student may receive credit for previous training if the student reenters and completes the classroom portion of the course within 90 days of the first scheduled day of class on the original contract.

(D) School holidays, such as summer vacation, Christmas holidays, etc., shall not be considered as days of absence.

(2) Driving safety. A school which offers a driving safety course shall document the hours scheduled each day and each hour attended in a manner approved by the director.

§176.24. *Leaves of absence.*

(a) Leaves of absence for reasonable purposes acceptable to the school director shall not exceed the lesser of 30 school days or 60 calendar days. This does not remove the requirement of completion of the classroom phase for driver education in 90 days and the behind-the-wheel phase in 180 days.

(b) A student shall be granted only one leave of absence.

(c) The school attendance records shall clearly show the dates for which the leave of absence was granted. A written statement as to why the leave of absence was granted signed by both the student and the school director indicating approval shall be placed in the individual student file.

(d) If the student fails to return from leave on the date and time specified, the student's enrollment shall be terminated, and a refund totally consummated within 30 days.

(e) The leave of absence policy shall be provided to the student prior to enrollment.

(f) All schools must maintain a master record of attendance for each student which clearly indicates the number of scheduled hours each day and the hours of absence. The instructor's roll books must indicate a positive record of each student's attendance. Entries in the roll books shall be made in ink.

§176.25. *Make Up.*

(a) A student shall be considered absent when not in attendance at a regularly scheduled class time and when not in atten-

dance at another regularly scheduled alternate class time on the same day. Any period of absence for any portion of scheduled instruction will require that the student complete that portion of scheduled instruction. Certificates of completion shall be issued only to students who have received all instruction as identified in the course description.

(b) Schools shall submit a make-up policy for approval. All make-up lessons shall be documented on the individual instruction record, and evidence of coursework performed shall be placed in the student file. Make-up lessons other than alternative scheduling may be presented in any sequence.

(1) Teenage driver education and driving safety. For a policy that allows students to attend a missed lesson at a later date during a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) Teenage driver education only.

(A) For a policy that allows students to perform a self-study or individual make-up session, a synopsis of each lesson shall be submitted as part of the application for licensure. A sample of each make-up lesson, clearly labeled as "make-up for the driver education course," shall be available for review by the agency at the school. Each lesson shall be clearly identified as a make-up lesson and shall be identified as to the units of instruction to be covered. A licensed instructor shall be available without other teaching assignments to provide assistance directly to students during the self-study lesson. Self-study make-up shall be considered an absence and be subject to the attendance policy.

(B) For a policy that provides alternative scheduling, a school may allow a student to attend an alternative class on the same calendar date as the class previously scheduled to attend. The school may provide alternative scheduling only if the sequence of instruction will be maintained by the identical lesson being offered in the alternative class time. In addition to all other requirements, the student instruction record shall reflect the time of day the alternate class was attended. A student selecting alternative scheduling shall not be considered absent.

(c) All classroom make-up lessons shall be completed by the student within 90 days of the first scheduled day of class. If the student fails to complete the entire classroom phase, including all make-up lessons, within the 90-day period, the student shall be terminated. Make-up work shall not

be authorized for the purpose of removing absences.

§176.26. Conduct policy.

(a) The school shall submit a copy of the policies pertaining to conduct for approval.

(b) A statement regarding the following shall be submitted:

(1) conditions for dismissal; and

(2) conditions for reentrance of those students dismissed for violating the conduct policy.

§176.27. Cancellation and Refund Policy.

(a) School cancellation and refund policies shall be in accordance with Texas Civil Statutes, Article 4413(29c), §13(h).

(b) Refunds for all driver training schools shall be completed within 30 days after the effective date of termination. Proof of completion of refund shall be the refund document or copies of both sides of the cancelled check and shall be on file within 120 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to Texas Civil Statutes, Article 4413(29c), §13(h)(4), a school is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to student's last known address;

(2) certified mail to the student's permanent address; and

(3) certified mail to the address of the student's parent, if different from the permanent address.

(d) If it is determined that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by Texas Civil Statutes, Article 4413(29c), §13(h)(2)(E), the school shall submit a report of an audit which includes any interest due as set forth in Texas Civil Statutes, Article 4413(29c), §13(h)(4), conducted by an independent certified public accountant or public accountant registered with the State Board of Public Accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by the agency for each student:

(1) name, address, and either social security number or driver's license number;

(2) last date of attendance, date of termination; and

(3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(e) All students trained by unlicensed instructors may be entitled to refund of tuition and fees for the training provided by the unlicensed instructors as determined by the director.

§176.28. Facilities and Equipment.

(a) Each driver training school licensed by the commissioner shall display, in a prominent place in each location, a sign or notice indicating the following:

(1) rates per lesson or course-classroom instruction;

(2) rates per lesson or course-behind-the-wheel instruction;

(3) rates for use of school vehicle-road tests (if extra charge is made); and

(4) length of lessons and course-classroom and behind-the-wheel.

(b) No classroom facility will be located in a private residence. Driver education schools shall have a permanent facility. The classroom facilities, when used for instruction, shall contain at least the following:

(1) adequate seating facilities and tables or desks for all students being trained; tables or desks are not required for driving safety course classes;

(2) a chalkboard, a dry-erase board, or felt display board for the driver education classroom, which is visible from all seating positions;

(3) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures;

(4) any materials that have been approved as a part of the course approval.

(c) All schools offering teenage driver education shall maintain an office in a place other than a private residence.

(d) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(e) Enrollment shall not exceed the design characteristics of the student work stations. The facilities shall meet any state

and local ordinances governing housing and safety for the use designated.

§176.29. Motor Vehicles.

(a) All behind-the-wheel instruction of students in driver education training schools shall be conducted in motor vehicles owned or leased by the driver training school, unless the student is physically handicapped and shall use special vehicle controls. All school motor vehicles and vehicles owned by physically handicapped students which are used for the purposes of demonstration and/or practice of driving lessons shall:

(1) be equipped with dual controls on the foot brake (and with a clutch on vehicles with manual transmission), located within easy reach of the instructor, that is capable of bringing the vehicle to a stop and otherwise be equipped in accordance with Texas motor vehicle laws;

(2) be equipped with safety belts, and students and instructors shall comply with requirements of Texas Civil Statutes, Article 6701d, §107C;

(3) be properly registered in compliance with the motor vehicle registration laws of Texas and bear a current motor vehicle inspection certificate, if required;

(4) be insured by a company authorized to do business in Texas with a continuous liability insurance policy in the amount specified in Texas Civil Statutes, Article 6701h;

(5) be equipped with an extra inside rearview mirror on the instructor's side and an outside rearview mirror on both sides;

(6) bear a conspicuously displayed, securely fastened sign to the front and rear stating "Student Driver." A sign similarly displayed bearing the name of the driver training school under which it is licensed may be used in lieu of the student driver sign. The sign shall be in plain view and shall have contrasting letters not less than 3 1/2 inches in height, readable from a distance of not less than 100 feet;

(7) be maintained in safe mechanical and physical condition at all times;

(8) be equipped with applicable mechanical devices when used in training of physically handicapped students (students may use their own vehicles if special mechanical devices are necessary); and

(9) be equipped with cushions for the proper seating of students if and when such are necessary.

(b) Before filing an original, renewal, or reinstatement application for a license with the agency, each driver training school shall cause the insuring company or carrier

to issue a certificate on forms furnished by the commissioner and certifying to the director that the insurance company or carrier has issued a policy or policies of insurance, in the designated amounts, for the vehicles listed and any other such information as requested. An insurance certificate or certificates shall accompany and account for each motor vehicle listed by each driver training school vehicle fleet schedule form as provided by the director and filed with the agency. In the event insurance coverage for any vehicle used for driver instruction or driver training purposes is not renewed, the driver training school shall give written notice to the agency at least 10 days prior to the expiration date of the insurance coverage.

(c) In the event the motor vehicle insurance coverage is to be cancelled, a copy of the written notice of cancellation shall be furnished immediately upon receipt of notice to the division by registered or certified mail.

§176.30. Student Complaints.

(a) The school shall have a written grievance procedure approved by the director that is disclosed to all students. The function of the procedure will be to attempt to resolve disputes between students, including drops and graduates, and the school. Adequate records shall be maintained.

(b) The school shall make every effort to resolve complaints at the school.

§176.31. Records.

(a) All schools shall make available the records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the agency. There may be unannounced compliance surveys at each school each year. Other compliance surveys may be announced at the discretion of the director.

(b) The schools shall retain all student records for at least three years. The actual driving safety comprehension test does not have to be retained; however, the test score must be in the student's records. The director may require a school to retain the actual test of each student for a designated period of time if deemed necessary by the director to show compliance with the legal requirements.

(c) All driver training schools licensed by the agency shall maintain a permanent record of instruction given to each student.

(1) Individual students.

(A) The entries on the individual student record form shall be made in ink. The minimum requirements indicating

attendance entries shall be maintained by using symbols or abbreviations of the following:

- (i) absent;
- (ii) make-up;
- (iii) present;
- (iv) termination;
- (v) withdraw; and
- (vi) transfer.

(B) The individual student record form shall include, but not be limited to, the following:

- (i) name and classroom address of the school;
- (ii) name, full address, telephone number of the student, and date of birth;
- (iii) applicable areas of instruction;
- (iv) date of enrollment;
- (v) date instruction terminated, if applicable;
- (vi) type and number of license held by the student, including the expiration date and licensing state;
- (vii) month, day, year, and time of instruction;
- (viii) each unit of instruction;
- (ix) grade earned for each unit;
- (x) instruction hours for classroom, simulators, behind-the-wheel, and observation;
- (xi) printed name, signature, and license number for each instructor;
- (xii) beginning and ending dates of the course;
- (xiii) statement of assurance signed by student and instructor that the record is true and correct; and
- (xiv) printed name and signature of the school director or assistant school director.

(C) The individual student record form for driver education shall indicate all applicable areas of training as follows:

- (i) adult classroom;
- (ii) adult behind-the-wheel;
- (iii) adult simulation;
- (iv) teen classroom;

(v) teen behind-the-wheel and observation; and

(vi) teen simulation.

(2) Group contract students. The record for group contract students shall contain a master instruction record indicating date and type of instruction given by subject matter and signature and license number of the instructor. Attached to the master instruction record will be a roster of students satisfactorily completing this course. Upon completion of each group contract course, each student enrolled shall be furnished a certificate indicating completion of sessions attended.

(3) Student records form. Students shall sign the student record form maintained by the school. The signature statement shall state that the student verifies the instruction received was as shown on the instruction record form.

(d) Each driver training school shall, upon request, furnish each individually contracted student a duplicate of his or her instruction record when all of the courses contracted for are completed or the student otherwise ceases taking instruction at or with the school providing all financial obligations have been met by the student.

(e) A student who changes schools before completing the classroom or laboratory instruction for driver education shall receive credit for the hours completed provided the student enters and completes within 90 days a course which is at least comparable to that in which the student was first enrolled. The teacher of the course in which the student was originally enrolled shall execute the driver education certificate (Texas driver education certificate), attaching thereto a statement showing the specific lessons covered by the student as outlined in the state-approved curriculum guide and the number of hours completed; the teacher shall mail the certificate to the chief school official in the school to which the student is transferring.

(f) Each school shall maintain a master student registration list consisting of at least the information in this paragraph. An entry shall be made on this list for any person who signs an enrollment agreement, makes a down payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs. The following information is required:

- (1) date;
- (2) name of student;
- (3) address of student including city, state, and zip code;
- (4) telephone number;
- (5) social security number or driver's license number, if available;

- (6) date of birth; and
- (7) name of course.

§176.32. Names and Advertising.

(a) No school shall adopt, use, or conduct any business under a name that is like, or deceptively similar to, a name used by another school without written consent of that school. School names approved by the Department of Public Safety as of August 31, 1989, may be approved by the agency. No new certificate of approval or license will be issued to a school after August 31, 1989 with a name like or deceptively similar to a name used by another school. Further, the name used in advertising shall be as stated on the driver training school license.

(b) No school or extension shall, by advertisement or otherwise, state or imply that a driver's license, permit, or certificate of completion is guaranteed or assured to any student or individual who will take or complete any instruction or enroll or otherwise receive instruction in any driver training school.

(c) No school shall advertise without including the school name or the school license number exactly as it appears on the school license. No extension shall advertise without including the extension registration number or the school name.

(d) The director may require that a school furnish proof to the agency which substantiates any advertising claims made by the school or extensions. Failure to provide acceptable proof may require that a retraction of such advertising claims be published by the school in the same manner as the disputed advertisement, and continuation of such advertising shall constitute cause for suspension or revocation of the school license.

(e) No school shall design, manufacture, or supply to any court of the state any written materials which may be false, misleading, or deceptive.

§176.33. Application Fees and Other Charges.

(a) In the event of a change in ownership of the school, the new owner shall pay the same fee as that charged for an initial fee for a school.

(b) A late renewal fee shall be paid in addition to the annual renewal fee if the school fails to postmark a complete application for renewal at least 30 days before the expiration date of the driver training school license. The requirements for a complete application for renewal are found in §176.13(g) this title (relating to School Licensure). The complete renewal application must be postmarked with a date on or before the due date.

(c) Driver education instructors applying for school licensure as required by Texas Civil Statutes, Article 4413(29c), §13(b)(2), shall pay the fee amount set forth in statute in lieu of those fee amounts set forth following.

(d) License, application, and registration fees shall be collected by the commissioner and deposited with the state treasurer in accordance with the following schedule:

- (1) initial fee for a school is \$2,550;
- (2) renewal fee for driver training school which offers only driver education courses is \$200;
- (3) fee for a change of address of a school is \$270;
- (4) fee for a change of name of a school or name of owner is 150;
- (5) the application fee for each additional course is \$35;
- (6) the application fee for each director, assistant director, or administrative staff member is \$20;
- (7) the fee for each extension is \$35;
- (8) the fee for change in the name of the extension or extension owner is \$35;
- (9) the fee for change in the physical address of the extension is \$35;
- (10) each application for an original driver training instructor's license shall be accompanied by a processing fee of \$50;
- (11) annual instructor license fee is \$37.50;
- (12) late instructor renewal fee is \$25;
- (13) duplicate driver training instructor license fee is \$8.00;
- (14) fee for an investigation at a school to resolve a complaint is \$1,000;
- (15) driver training school late renewal fee is \$200;
- (16) fee for certificate of course completion is \$1.00.

§176.34. Uniform Certificates of Course Completion for Driving Safety Course.

(a) The owner or primary consignee of a driver safety course may request to purchase serially numbered uniform certificates of course completion by submitting an order form provided by the commissioner stating the number of certificates to be purchased and including payment of all appropriate fees.

(b) The owner or primary consignee shall maintain an ascending numerical accounting record approved by the director of the individuals receiving the cer-

tificates. The owner or primary consignee shall make available upon request copies of the issued certificates. The owner or primary consignee shall also maintain a policy which effectively ensures protective measures are implemented by the course owner or primary consignee to ensure that unissued certificates are secure at every location issuing certificates. The records and unissued certificates shall be available for review by representatives of the agency.

(c) Course owners and primary consignees shall issue or sell uniform certificates of course completion only to persons offering an approved driving safety course taught by agency-approved instructors.

(d) Failure to provide numerical accounting of issued and unissued certificates or any other violations of this chapter shall be considered sufficient cause for revocation or denial of the school license and/or course approval.

(e) Lost or stolen unissued certificates shall be reported to the director within two days of the discovery of the incident. In addition, the course owner or primary consignee shall be responsible for conducting an investigation to determine the circumstances surrounding the loss or theft of the certificates. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the director. The commissioner shall review the report, and if an unsatisfactory response is received, may suspend the right of the course owner or primary consignee to purchase certificates of course completion or assess a civil penalty as appropriate.

(f) A list of every instructor providing the course shall be submitted to the agency and updated quarterly reflecting any additions or deletions of instructors by the owner or primary consignee. Procedures shall be implemented by the owner or primary consignee to ensure that all persons instructing the course are properly licensed instructors.

(g) Procedures for issuing duplicate certificates shall be developed by each course owner or primary consignee. The procedures shall ensure that the duplicate certificate is clearly identified as being a duplicate of a previously issued certificate and shall indicate the control number of the previously issued certificate.

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

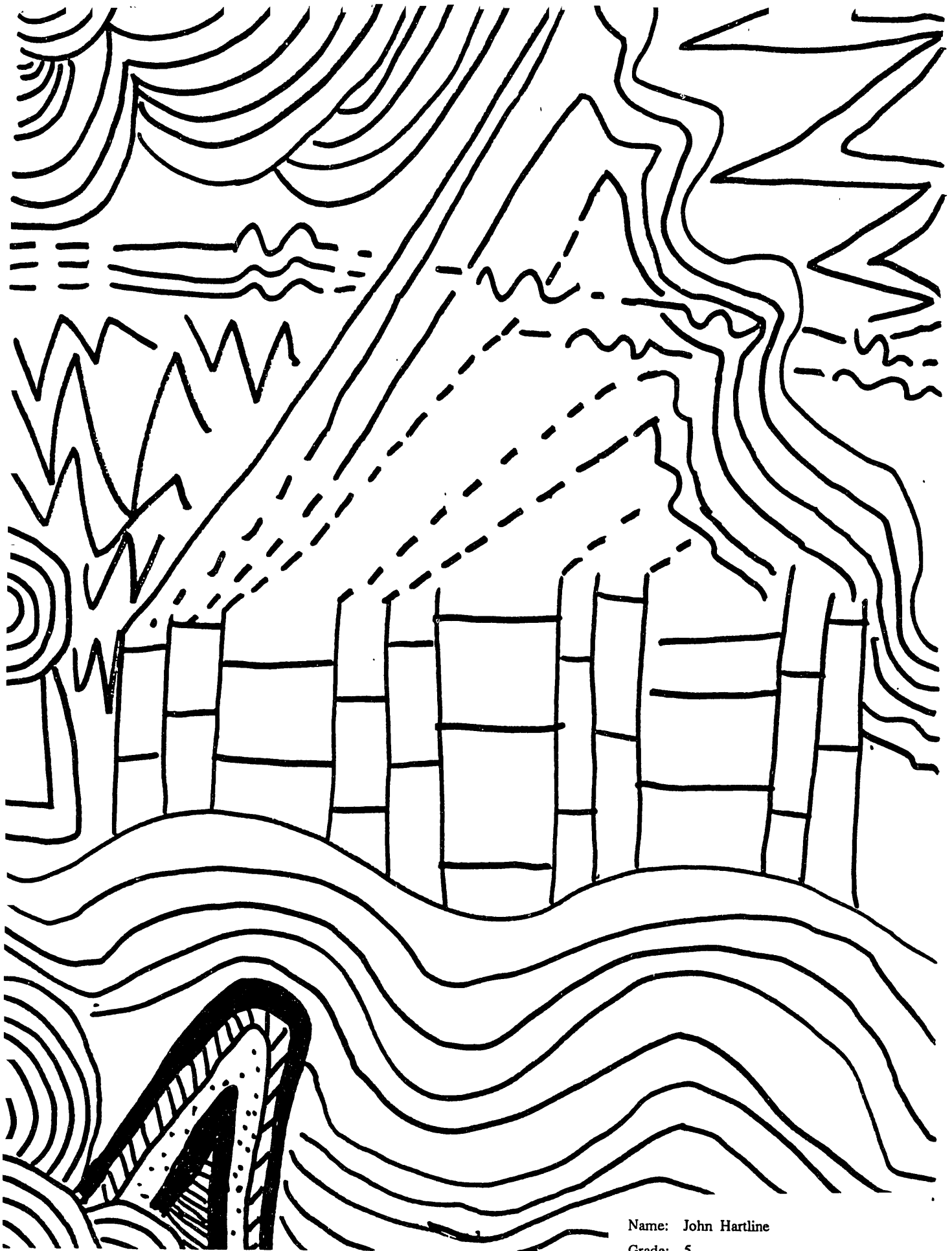
Issued in Austin, Texas, on January 15, 1992.

TRD-9200976
 Criss Cloudt
 Director, Planning
 Coordination
 Texas Education Agency

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512)
463-9701





Name: John Hartline

Grade: 5

School: Christie Elementary, Plano ISD

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 519. Practice and Procedure

• 22 TAC §§519.32-519.46

The Texas State Board of Public Accountancy proposes new §§519.32-519.46 concerning prehearing discovery in proceedings conducted by the agency. The new sections are similar to the discovery provisions of the Texas Rules of Civil Procedure with minor changes conforming to general administrative law. These sections should allow for more thorough disclosure of information and evidence prior to hearings before the agency and should make discovery procedures in such cases consistent with a majority of other state agencies and civil litigation practice in general.

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

Mr. Treacy also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be clarification of the agency's prehearing discovery procedures and improvement in consistency with current statutory authority regarding administrative procedures. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 450-7066.

The new sections are proposed under Texas Civil Statutes, Article 41a-1 §6, which provides the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary or advisable to effectuate the Public Accountancy Act of 1991.

§519.32. Prefiled Testimony and Objections. Where ordered by the hearings officer, all testimony shall be prefiled. Objections to the testimony shall also be prefiled. The prefiled objections shall specifically cite, e.g. by volume, page and line(s), to the objectionable testimony and provide the legal basis for the objection. Any objections not prefiled are waived. The hearings officer shall announce his rulings on the objections prior to or at the beginning of the proceeding.

§519.33. Supplementing Prefiled Testimony and Objections.

(a) At the discretion of the hearings officer, prefiled testimony may be supplemented with the introduction of newly discovered evidence, or when it becomes obvious to the witness that the original prefiled testimony was false or incomplete, or when substantive evidence has been denied as a result of a hearings officer ruling on prefiled objection.

(b) If prefiled testimony is supplemented as provided in this section, the other parties may be afforded the opportunity to supplement their prefiled testimony or prefiled objections. Supplementation by the other parties is limited to those subjects which were supplemented by the original witness.

§519.34. Forms and Scope of Discovery; Protective Orders; Supplementation of Responses.

(a) Forms of discovery. Permissible forms of discovery include:

- (1) oral or written deposition of any party or nonparty;
- (2) written interrogatories;
- (3) request of a party for admissions of facts and the genuineness or identity of documents or things; and
- (4) requests and motions for production, examination, and copying of documents or other tangible materials.

(b) Scope of discovery. Except as provided in subsection (c) of this section, unless otherwise limited by order of the hearings officer in accordance with these rules, the scope of discovery is as follows.

(1) In general. Parties may obtain discovery regarding any matter which is relevant to the subject matter in the pending proceeding whether it relates to the pending application, petition, protest, claim, or defense of any other party. It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. It is also not grounds for objection that an interrogatory propounded pursuant to §519.37 of this title (relating to Interrogatories to Parties) involves an opinion or contention that relates to fact or the application of law to fact, but the hearings officer may order such an interrogatory not be answered until after designated discovery has been completed or until a prehearing conference or other later time. It is also not

grounds for objection that a request for admission propounded pursuant to §519.38 of this title (relating to Requests for Admissions) relates to statements or opinions of fact or of the application of law to fact or mixed questions of law and fact or that the documents referred to in a request may not be admissible at hearing.

(2) Documents and tangible things. A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of any and all documents (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated if necessary, by the person from whom production is sought, into reasonably usable form) and any other tangible things which constitute or contain matters relevant to the subject matter in the proceeding. A person is not required to produce a document or tangible thing unless it is within the person's possession, custody or control. Possession, custody, or control includes constructive possession such that the person need not have actual physical possession. As long as the person has a superior right to compel the production from a third party (including an agency, authority, or representative), the person has possession, custody or control.

(3) Potential parties and witnesses. A party may obtain discovery of the identity and location (name, address, and telephone number) of any potential party and of persons having knowledge of relevant facts. A person has knowledge of relevant facts when he or she has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirement of this subsection and personal knowledge is not required.

(4) Experts and reports of experts. Discovery of the facts known, mental impressions, and opinions of experts, otherwise discoverable because the information is relevant to the subject matter in the pending proceeding but which were acquired or developed in anticipation of hearing and the discovery of the identity of experts from whom the information may be obtained only as follows.

(A) In general. A party may obtain discovery of the identity and location (name, address, and telephone number) of an expert who may be called as an expert witness, the subject matter of which the witness is expected to testify, the mental impressions and opinions held by the ex-

pert, and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert. The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as an expert witness at hearing is required if the consulting expert's opinions or impressions have been reviewed by a testifying expert.

(B) Reports. A party may also obtain discovery of documents and tangible things including all tangible reports, physical models, compilations of data, and other materials prepared by an expert or for an expert in anticipation of the expert's hearing and deposition testimony. The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of the hearing if the consulting expert's opinions or impressions have been reviewed by a testifying expert.

(C) Reduction of report to tangible form. If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert who will be called as an expert witness have not been recorded and reduced to tangible form, the hearings officer may order these matter reduced to tangible form and produced within a reasonable time.

(5) Statements. Any person, whether or not a party, shall be entitled to obtain, upon written request, his own statement previously made concerning the matter which is the subject of the hearing, or its subject matter, which is in the possession, custody or control of any party. If the request is refused, the person may move for a hearings officer's order under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14a. For purposes of this paragraph, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; or

(B) a stenographic, mechanical, electrical, or other type of recording, or any transcription thereof, which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

(c) Exemptions. The following matters are protected from disclosure by privilege.

(1) Work product. The work product of an attorney, subject to the exceptions of Texas Rules of Civil Evidence,

503(d), which shall govern as to work product as well as to attorney-client privilege.

(2) Experts. The identity, mental impressions and opinions of an expert who has been informally consulted or of any expert who has been retained or specially employed by another party in anticipation of, or preparation for, hearing or any documents or tangible things containing such information if the expert will not be called as an expert witness, except that the identity, mental impressions, and opinions of an expert who will not be called to testify as an expert and any documents or tangible things containing such impressions and opinions are discoverable if the consulting expert's opinions or impressions have been reviewed by a testifying expert.

(3) Written statement. The written statements of potential witnesses and parties, when made in connection with, or in anticipation of the prosecution, investigation, defense, or protest that is the subject of the proceeding, except that persons, whether parties or not, shall be entitled to obtain, upon request, copies of statements they have previously made concerning the subject of the proceeding and which are in the possession, custody, or control of any party. The term "written statements" includes:

(A) a written statement signed or otherwise adopted or approved by the person making it; and

(B) a stenographic, mechanical, electrical, or other type of record, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded. For purpose of this paragraph, a photograph is not a statement.

(4) Party communications. Communications between agents or representatives or the employees of a party to the proceeding or communications between a party and that party's agents, representatives, or employees, when made in connection with the prosecution, investigation, defense, or protest of the particular proceeding, or in anticipation of the prosecution, protest, or defense of any claims made as part of the proceeding. This exemption does not include communications prepared by or for experts that are otherwise discoverable. For the purpose of this paragraph, a photograph is not a communication.

(5) Other privileged information; any matter protected from disclosure by any other privilege. Upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by

other means, a party may obtain discovery of the materials otherwise exempt from discovery by paragraphs (3) and (4) of this subsection. Nothing in this subsection shall be construed to render non-discoverable the identity and location of any potential party, any person having knowledge of relevant facts, any expert who is expected to be called as a witness during hearing, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert.

(d) Presentation of objections. Either an objection or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for special hearing and a determination is made by the hearings officer. At any reasonable time, any party may request a special hearing on any objection or motion for protective order. The failure of a party to obtain a ruling prior to the hearing on any objection to discovery or motion for protective order does not waive such objection or motion. In objecting to an appropriate request within the scope of subsection (b) of this section, a party seeking to exclude any matter from discovery on the basis of an exemption, privilege, or immunity from discovery, must specifically plead the particular exemption, privilege, or immunity from discovery relied upon at or prior to any special hearing, shall produce any evidence necessary to support such claim either in the form of affidavits filed and served at least seven days before the special hearing or by testimony. If the hearings officer determines that an in camera inspection and review by the hearings officer of some or all of the requested discovery is necessary, the objecting party must segregate and produce the discovery to the hearings officer in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in event the objection is sustained. When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights rather than a specific immunity or exemption, it is not necessary for the hearings officer to conduct an inspection and review of the particular discovery before ruling on the objection. After the date on which answers are to be served, objections are waived unless an extension of time has been obtained by written agreement or order of the hearings officer or good cause is shown for the failure to object within such period.

(e) Protective orders. On motion specifying the grounds and made by any person against or from whom discovery is sought under these rules, the hearings officer may make any order in the interest of justice necessary to protect the movant from

undue burden, unnecessary expense, harassment, annoyance, or invasion of personal, constitutional, or property rights. Specifically, the hearings officer's authority as to such order extends to, but is not limited by, any of the following:

(1) ordering that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that discovery not be undertaken at the time or place specified;

(2) ordering that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the hearings officer.

(f) Duty to supplement. A party who has responded to a request for discovery that was correct and complete when made is under no duty to supplement his response to include information thereafter acquired, except the following shall be supplemented not less than 30 days prior to hearing unless the hearings officer finds that good cause exists for permitting or requiring later supplementation.

(1) A party is under a duty reasonably to supplement his response if he obtains information upon the basis of which:

(A) he knows that the response was incomplete and incorrect when made;

(B) he knows that the response, though correct and complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading.

(2) If the party expects to call an expert witness when the identity or the subject matter of such expert's testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, such response must be supplemented to include the name, address, and telephone number of the expert witness, and the substance of the testimony concerning which the expert witness is expected to testify, as soon as is practical, but in no event less than 30 days prior to hearing except on leave of the hearings officer.

(3) In addition, a duty to supplement any and all responses may be imposed by order of the hearings officer or by written agreement of the parties, or at any time prior to hearing, through new requests for supplementation of prior answers.

(g) Discovery motions. All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of hearings officer intervention have been attempted and failed.

§519.35. Stipulations Regarding Discovery Procedure. Unless the hearings officer orders otherwise, the parties may, by written agreement:

(1) provide that deposition be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

(2) modify the procedures provided by these rules for other methods of discovery. An agreement affecting a deposition upon oral examination is enforceable if the agreement is recorded in the deposition transcript.

§519.36. Discovery and Production of Documents and Things for Inspection, Copying, or Testing.

(a) Procedure. Any party may serve upon any other party a request to accomplish any of the following.

(1) To produce and permit the party making the request or someone acting on his behalf, to inspect, sample, test, photograph, and/or copy, any designated documents or tangible things which constitute or contain matter within the scope of these rules which are in the possession, custody or control of the party upon whom the request is served.

(2) The request shall set forth the items to be inspected either by individual item or by category with reasonable particularity. The request shall specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(3) The party upon whom the request shall serve a written response which shall state, with respect to each item or category of items, that inspection or other requested action will be permitted as requested, and he shall thereafter comply with the request, except only to the extent that he makes objections in writing to particular items, categories, or items, stating specific reasons why such discovery should not be allowed.

(4) Upon request of the hearings officer, a true copy of the request and response, together with proof of the service thereof on all parties shall be filed promptly with the hearings officer by the party making it, except that any documents produced in response to a request need not be filed.

(5) A party who produces documents for inspection shall produce them as they are kept in the usual course of business, or shall organize and label them to correspond with the categories in the request.

(6) Testing or examination shall not extend to destruction or material alter-

ation of an article without notice, hearing, and prior approval by the hearings officer.

(b) Time. All requests shall be provided to every party to the hearing. The party upon whom the request is served shall serve a written response and objections, if any, within 21 days after the service of the request. The time for making a response may be shortened or lengthened by the hearings officer.

(c) Order. If objection is made to a request or to a response, either party may file a motion with the hearings officer and seek relief pursuant to these rules.

§519.37. Interrogatories to Parties.

(a) Any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation or a partnership or association, or governmental agency, by an officer or agent who shall furnish such information as is available to the party. Upon request of the hearings officer, a true copy of the interrogatories and the written answers or objections, together with proof of service, shall be filed promptly with the hearings officer by the party making them, except that when an interrogatory is answered by reference as permitted in paragraph (2) of this subsection, the records so referenced need not be filed.

(1) Service. When a party is represented by an attorney, service of interrogatories shall be made on the attorney unless service upon the party himself is ordered by the hearings officer.

(2) Scope. Interrogatories may relate to any matters which can be inquired into under these sections, but the answers, subject to any objections as to admissibility, may be used only against the party answering the interrogatories.

(3) Public and business records. Where the answer to an interrogatory may be derived or ascertained from public records or the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and, if applicable, to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts, or summaries. The specification of records provided shall include sufficient detail to permit the interro-

gating party to locate and identify as readily as can the party served, the records from which the answers may be ascertained.

(b) Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered but the hearings officer, on motion of the deponent or the party interrogated, may make such protective order as justice requires.

(c) Unless other time limits are set by the hearings officer or by written agreement of the parties, the party upon whom the interrogatories have been served shall serve answers upon the party submitting the interrogatories within 21 days after the service of the interrogatories. The hearings officer may enlarge or shorten the time for serving answers or objections.

(d) The number of questions, including subsections, in a set of interrogatories shall be limited so as not to require more than answers per set if the hearings officer allows two sets of interrogatories, or 50 answers if the hearings officer allows only one set of interrogatories. Each part of a compound question will be considered a separate question. No more than two sets of interrogatories may be served by a party to any other party, except by written agreement or as may be permitted by the hearings officer after a special hearing upon a showing of good cause. The hearings officer may, after special hearing, reduce or enlarge the number of interrogatories or sets of interrogatories if justice so requires.

(e) The interrogatories shall be answered separately and fully in writing under oath. Answers to interrogatories shall be preceded by the question or interrogatory to which the answer pertains. True copies of the interrogatories, and answers and objections thereto, shall be provided to all parties or their attorneys. The answers shall be signed and verified by the person making them.

(f) A party may serve written objections to specific interrogatories or portions thereof. Objections must be served within seven days of receiving the interrogatories. Answers only to those interrogatories, or portions thereof, to which objection is made, shall be deferred until the objections are ruled upon and for such additional time thereafter as the examiner may direct. Any party may request a special hearing as to such objections at the earliest possible time.

§519.38. Requests for Admissions.

(a) Request for admission.

(1) A party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within

the scope of these rules. The request may relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Except by written agreement of the parties or upon leave of the hearings officer, a party may serve only one set of admissions upon any other party.

(2) Copies of documents which are the subject of the request for admission shall be served with the request unless the documents have been or are otherwise furnished or made available for inspection or copying. Whenever a party is represented by an attorney of record, service for a request for admission shall be made on his attorney unless service on the party himself is ordered by the hearings officer. Upon request of the hearings officer, a true copy of a request for admission or of a written answer or objection, together with proof of the service thereof, shall be promptly filed with the hearings officer by the party making it.

(3) Each matter of which an admission is requested shall be separately set forth. The hearings officer may specify the dates by which the admission may be served, answered, specifically denied, or objected to as provided in these rules. The matter is admitted without necessity of a hearings officer's order unless, within 14 days after service of the request, or within such time as the hearings officer may allow, or as otherwise agreed by the parties, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his attorney.

(4) If objection to a requested admission is made, the reason therefore shall be stated.

(5) The answer to a requested admission shall specifically deny the matter or set forth in detail the reason that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder.

(6) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or easily obtainable by him is insufficient to enable him to admit or deny.

(7) A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request. He may deny the matter or set forth reasons why he cannot admit or deny it.

(b) Effect of admissions.

(1) Any matter admitted under this section is conclusively established as to the party making the admission unless the hearings officer, on motion and for good cause shown, permits withdrawal or amendment of the admission.

(2) The hearings officer may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause for such withdrawal or amendment if the hearings officer finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the proceedings will not be subserved thereby.

§519.39. Subpoena of Witnesses and for the Production of Documentary Evidence.

(a) On his own motion or on the written request of any party to a hearing pending before him, on a showing of good cause, and on deposit of sums as required by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14, the hearings officer shall issue a subpoena addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas in the Texas Rules of Civil Procedure, Rule 178, to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of the proceedings.

(b) If a subpoena also commands the person to whom it is directed to produce books, papers, documents, or tangible things designated therein, the hearings officer, on motion made seasonably and in any event at or before the time specified in the subpoena for compliance therewith, may:

(1) quash or modify the subpoena if it is unreasonable and oppressive; or

(2) condition denial of the motion to quash or modify upon the advancement by the person on whose behalf the subpoena is issued, of the reasonable costs of producing the books, papers, documents, or tangible things.

§519.40. Form of Subpoena. The style of the subpoena shall be "The Texas State Board of Public Accountancy." It shall state the style of the hearing, that the hearing is pending before the Texas State Board of Public Accountancy, the time and place at which the witness is required to appear and the party at whose insistence the witness is summoned. It shall be signed by the hearings officer, but need not be under the seal of the board, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any date for

which hearing of the proceeding may be set. It shall be addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas as provided in the Texas Rules of Civil Procedure, Rule 178.

§519.41. Witness Shall Attend Hearing. Every witness summoned in any hearing shall attend the hearing from day to day, and from place to place, until discharged by the hearings officer or party summoning such witness. If any witness, after being duly summoned, shall fail to attend, such witness may be subject to any sanctions or remedies available through district court to the party summoning the witness.

§519.42. Evidence.

(a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence will be excluded.

(b) Whenever necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

§519.43. Issuance of Commission to Take Deposition.

(a) On his own motion or on the written request of any party to a contested case pending before him, and on deposit of sums as required by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §4(d), a hearings officer shall issue a commission, addressed to several officers authorized by statute to take depositions, to require that the deposition of a witness be taken, which commission shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects as may be necessary and proper for the purposes of the proceeding.

(b) The place of taking the deposition shall be in the county of the witness' residence, or where the witness is employed or regularly transacts business in person. The commission shall authorize and require the officer or officers to whom it is addressed, or either of them, to examine the witness before him on the date and at the place named in the commission and to take answers under oath to questions which may be propounded to the witness by the parties to the proceeding, or the attorneys for the parties. The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

§519.44. Witness Shall Comply with Subpoena. In the case of failure of a person to comply with a subpoena or commission to take deposition issued pursuant to these rules, the party requesting the subpoena or commission to take deposition may bring suit to enforce the subpoena or commission to take deposition in a district court, either in Travis County or in the county in which the subject hearing may be held.

§519.45. Submission to Witness; Changes; Signing.

(a) When the testimony is fully transcribed, the deposition officer shall transmit or provide the original deposition transcript to the witness or if the witness is a party with an attorney of record, to the attorney of record, for examination and signature by the witness before any officer authorized to administer an oath, unless such examination and signature are waived by the witness and by the parties.

(b) No erasures or obliterations of any kind are to be made to the original testimony as transcribed by the deposition officer. Any changes in form or substance which the witness desires to make shall be furnished to the deposition officer by the witness, together with a statement of the reasons given by the witness for making such changes. The changes and the statement of the reasons for the changes shall be attached to the deposition by the depositions officer. The deposition transcript and any changes shall then be subscribed by the witness under oath, before any officer authorized to administer an oath, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign.

(c) If the witness does not sign and return the original deposition transcript within 20 days of its submission to him or his attorney of record, the deposition officer shall sign a true copy of the transcript and state on the record the fact of the waiver of examination and signature or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore. The copy of the deposition transcript may then be used as fully as though signed.

§519.46. Use of Deposition Transcripts in Board Proceedings.

(a) Use of deposition transcript in same proceeding.

(1) Use of depositions. At hearing, any part or all of a deposition taken in the same proceeding, insofar as admissible under the Texas Rules of Civil Evidence or these rules, may be used by any person for any purpose against any party who was

present or represented at the taking of the deposition or who had reasonable notice thereof. Further, the Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness were then present and testifying. Depositions shall include the original transcripts or any certified copies thereof. Unavailability of the deponent is not a requirement of admissibility.

(2) Parties joined after deposition taken. If one becomes a party after a deposition is taken and has an interest similar to that of any party described in paragraph (1) of this subsection, the deposition is admissible against him only if he has had a reasonable opportunity, after becoming a party, to redepose the deponents, and has failed to exercise that opportunity.

(b) Use of deposition transcript taken in different proceeding. At trial or upon the hearing of a motion or an interlocutory proceeding before a hearings officer, any part or all of a deposition taken in a different proceeding may be used subject to the provisions and requirements of the Texas Rules of Civil Evidence or these rules. Further the Texas Rules of Evidence shall be applied to each question and answer as though the witness was then present and testifying.

(c) Motion to suppress. When a deposition transcript has been delivered by the deposition officer and notice of delivery given at least one entire day before the day on which the case is called for hearing, error and irregularities in the notice of delivery, and errors in the manner in which the testimony is transcribed or the deposition transcript is prepared, signed, certified, sealed, endorsed, delivered, or otherwise handled by the deposition officer are waived, unless a motion to suppress the deposition transcript or some part thereof is made and notice of the written objections made in the motion is given to every other party before hearing commences.

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 January 16, 1992.

TRD-9201191

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 450-7066



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 151. Nurse Aides

The Texas Department of Health (department) proposes an amendment to existing §151.2, the repeal of existing §§151.3-151.12, and new §151.3-151.12, concerning nurse aides. Section 151.2 covers definitions and new §§151.3-151.12 cover facility requirements, nurse aide training and competency evaluation program requirements, competency evaluation program requirements, program director and skills examiner requirements, processing and approval of applications, waiver and reciprocity requirements, and registry requirements. Existing §151.3-151.12 (which are proposed for repeal) cover placement on the registry; registry findings and inquiries; training and competency evaluation programs requirements; approval of program coordinator, primary instructor, and skills examiner; instructional certification programs; and processing and approval of applications. The amendment, new sections, and repeal of existing sections of the rules are necessary to implement the recent requirements established in the Omnibus Budget Reconciliation Act of 1987 (Act), and the regulations adopted under the Act.

Stephen L. Seale, Chief Accountant III, 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. Seale 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 improve the care of residents in facilities. The proposed sections will clarify the requirements for nurse aide training, competency testing, and placement on the registry; thus promoting compliance with the requirements. 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. There will be no effect on local employment.

Comments on the proposal may be submitted to Gerald W. Guthrie, Director, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6628. Comments will be received for 30 days from the date of publication of the proposed rules in the *Texas Register*.

• 25 TAC §151.2

The amendment is proposed under the Act, Public Law 100-203, §§4201-4214, as amended, which requires the Board of Health through an agreement with the Texas Department of Human Services to adopt rules implementing a nurse aide registry and training and competency evaluation program for nurse aides; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the

performance of every duty imposed by law on the Texas Board of Health, Texas Department of Health, and the commissioner of health.

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

Act—The Omnibus Budget Reconciliation Act of 1987 (Act), Public Law 100-203, §§4201-4214, December 22, 1987 (amending the Social Security Act, §1819 and §1919), as amended and the federal regulations promulgated under the Act in Title 42, Code of Federal Regulations, Part 483.

[Board—The Texas Board of Health.]

Competency evaluation program (CEP)—A skills examination and a written or oral examination approved by the department.

Curriculum—The Texas curriculum for nurse aides in long term care facilities established by the department.

Direct supervision—Actual observation of students performing tasks in a nurse aide training and competency evaluation program (NATCEP).

Examination—A competency evaluation program or the competency evaluation portion of a training and competency evaluation program [which includes manual (clinical) skills and written or oral evaluations].

General supervision—The provision of necessary guidance and maintenance of ultimate responsibility for the program.

Instructional certification program—A program of instruction in teaching adult learners approved by the department under §151.10 of this title (relating to Instructional Certification Program Application and Approval).

Licensed health professional—A physician; physician assistant; **nurse practitioner**; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; or certified social worker.

Non-facility-based program—A nurse aide training and competency evaluation program not offered by or in a facility.

Nurse aide—An individual providing nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional who volunteers such services without monetary compensation, or who is exempt under §151.3(a) of this title (relating to Requirements for Placement on Registry).] A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license, certification, or registration is required under state or federal law.

Nurse aide training and competency evaluation program (NATCEP)—A program approved by the department to train and evaluate individuals to act as nurse aides.

Primary Instructor (PI)—An individual approved by the department as described in §151.9 of this title (relating to Approval of Program Coordinator, Primary Instructor, and Skills Examiner).]

Program—A nurse aide training and competency evaluation program.

Program coordinator (PC)—An individual approved by the department as described in §151.9 of this title (relating to Approval of Program Coordinator, Primary Instructor, and Skills Examiner).]

Program director—An individual approved by the department as described in §151.6 of this title (relating to Program Director and Skills Examiner Requirements).

Registry—A listing of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program or a competency evaluation program approved by the department or qualified by waiver or reciprocity.

Skills examiner—An individual approved by the department in accordance with §151.6 [§151.9] of this title (relating to Program Director and Skills Examiner Requirements [Approval of Program Coordinator, Primary Instructor, and Skills Examiner]).

Supplemental trainers—Qualified personnel who may participate in teaching a program in accordance with §151.6 of this title (relating to Program Director and Skills Examiner Requirements).

Trainer—Qualified personnel who may participate in teaching a program in accordance with §151.9 of this title (relating to Approval of Program Coordinator, Primary Instructor, and Skills Examiner).]

Training and Competency Evaluation Program—A program approved by the department to instruct and evaluate individuals to act as nurse aides.]

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 January 27, 1992.

TRD-9201187

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: March 15, 1992

For further information, please call: (512) 834-6628

• 25 TAC §§151.3-151.12

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

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

The repeals are proposed under the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §§4201-4214, as amended, which requires the Board of Health through an agreement with the Texas Department of Human Services to adopt rules implementing a nurse aide registry and training and competency evaluation program for nurse aides; and Health and Safety Code, §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, Texas Department of Health and the commissioner of health.

§151.3. Requirements for Placement on Registry.

§151.4. Requirements for Retraining.

§151.5. Registry; Findings; Inquiries.

§151.6. Training and Competency Evaluation Program Application and Approval.

§151.7. Training and Competency Evaluation Requirements.

§151.8. Reapproval of Training and Competency Evaluation Programs.

§151.9. Approval of Program Coordinator, Primary Instructor, and Skills Examiner.

§151.10. Instructional Certification Program Application and Approval.

§151.11. Processing Approval Requests.

§151.12. Withdrawal of Approval of Program, Instructional Certification Program, Program Coordinator, Primary Instructor, or Skills Examiner.

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 January 27, 1992.

TRD-9201188

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: March 15, 1992

For further information, please call: (512) 834-6628



The new sections are proposed under the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §§4201-4214, as amended, which requires the Board of Health

through an agreement with the Texas Department of Human Services to adopt rules implementing a nurse aide registry and training and competency evaluation program for nurse aides; and Health and Safety Code, §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, Texas Department of Health and the commissioner of health.

§151.3. Facility Requirements.

(a) A facility must not use on a full-time basis any individual as a nurse aide in the facility for more than four months unless the individual:

(1) is competent to provide nursing or nursing-related services; and

(2) has met the following:

(A) successfully completed a Nurse Aide Training and Competency Evaluation Program (NATCEP) or a Consultation Evaluation Program (CEP); or

(B) been deemed or determined competent as provided in §151.10 of this title (relating to Waiver and Reciprocity Requirements).

(b) A facility must not use on a temporary, per diem, leased, or any basis other than as a permanent employee any individual as a nurse aide in the facility unless the individual meets the requirements in subsection (a) of this section.

(c) A facility must not use an individual who has worked less than four months as a nurse aide in the facility unless the individual:

(1) is a full-time employee and is in a NATCEP;

(2) has successfully completed a NATCEP or CEP; or

(3) has been deemed or determined competent as provided in §151.10 of this title (relating to Waiver and Reciprocity Requirements).

(d) Private duty aides and sitters hired by residents or their families do not have to meet the requirements of this chapter or the Act. Facilities are encouraged to develop their own policies regarding private duty aides and sitters.

(e) Before allowing an individual to serve as a nurse aide, a facility must request and receive verification that the individual is on the registry unless the individual:

(1) is a full-time employee and is in a NATCEP; or

(2) can prove that he or she has recently successfully completed a NATCEP

or a CEP and has not yet been included in the registry. Facilities must follow up to ensure such an individual actually is placed on the registry.

(f) Before allowing an individual to serve as a nurse aide, a facility must seek information from each state registry established under the Omnibus Reconciliation Act (Act) of 1987, which the facility believes will include information on the individual.

(g) A facility must not employ individuals who have had a finding entered into the registry concerning abuse, neglect, mistreatment of a resident, or misappropriation of a resident's property.

§151.4. Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements.

(a) To train individuals who are not on the registry, a facility may offer a NATCEP or contract with another NATCEP.

(b) A person or entity which desires to offer a NATCEP shall file an application for approval on official forms prescribed by the Texas Department of Health (department) which shall include but not be limited to:

(1) the name, phone number, location, and mailing address of the school or facility;

(2) the category of the NATCEP designated as a facility-based NATCEP or a non-facility-based NATCEP;

(3) the type of NATCEP designated as open or closed to public enrollment;

(4) the name of the NATCEP director;

(5) the total number of classroom and clinical hours and a schedule of the daily hours of the initial classroom and clinical NATCEP;

(6) a list of facilities to be used for clinical training and letter(s) of agreement from the facilities signed by the chief executive officer or administrator of the facilities, if cooperative agreements are made between the NATCEP and the facility;

(7) the location of the classroom course and a description of the classroom and skills training room(s) including adequate space, cleanliness, safety, lighting, and temperature controls;

(8) a list of textbook(s), audiovisual materials and other equipment to be used;

(9) verification that the NATCEP shall follow the rules and the

curriculum established by the department and shall agree to permit unannounced visits by the department or its designee; and

(10) additional information and supporting documentation requested by the department.

(c) If an entity or person desires to offer more than one NATCEP for which the required number of classroom hours or the location of the classroom course differs from NATCEP to NATCEP, the entity or person shall file a separate application for each of these separate NATCEPs.

(d) A NATCEP which exceeds both the curriculum content and hours required by the department must:

(1) teach the curriculum in one distinct and separate segment of the longer NATCEP; and

(2) submit a course outline which shows the placement of the curriculum in the total NATCEP and provides the total weeks and hours of the required curriculum and of the total NATCEP.

(e) A NATCEP offered by or in a facility shall not be approved by the department if:

(1) within the previous two years, the facility:

(A) has operated under a waiver under 42 United States Code (USC) §1395i-3(b)(4)(C)(ii)(II) or §1396r(b)(4)(C)(ii) relating to the services of a registered nurse;

(B) has been subject to an extended (or partial extended) survey under 42 United States Code, §1395i-3(g) or §1396r(g);

(C) has been assessed a civil money penalty described in 42 United States Code, §1395i-3(h) or §1396r(h) of not less than \$5,000; or

(D) has been subject to:

(i) denial of payment under 42 USC, §1395i-3(h) or §1396r(h);

(ii) appointment of temporary management under 42 USC, §1395i-3(h) or §1396r(h);

(iii) termination of participation under 42 USC, §1395i-3(h)(4) or §1396r(h)(1)(B)(i); or

(iv) closure of the facility under 42 USC, §1396r(h)(2); or

(2) pursuant to state or federal law, the prohibition occurred within the period from October 1, 1988, to September 30, 1990, and it is within two years of the

action or assessment, one of the following applies to the facility:

(A) the facility had its participation terminated under the Social Security Act, Title XVIII, or under the state plan under the Social Security Act, Title XIX;

(B) the facility was subject to a denial of payment under either title mentioned in subparagraph (A) of this paragraph;

(C) the facility was assessed a civil money penalty not less than \$5,000 for deficiencies in facility standards;

(D) the facility operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(E) pursuant to state action, the facility was closed or had its residents transferred.

(f) Each NATCEP must teach a minimum of 75 clock hours of training, including at least:

(1) 51 clock hours of classroom training defined as classroom and skills training which does not involve direct care of residents by trainees; and

(2) 24 clock hours of clinical training defined as hands on care of residents by trainees under the direct supervision of a licensed nurse.

(g) Each NATCEP must teach the curricula established by the department including:

(1) at least 16 introductory hours of training in the following areas prior to any direct contact with a resident:

(A) communication and interpersonal skills;

(B) infection control;

(C) safety/emergency procedures including the Heimlich maneuver;

(D) promoting residents' independence; and

(E) respecting residents' rights;

(2) personal care skills;

(3) basic nursing skills;

(4) mental health and social service needs;

(5) care of cognitively impaired residents;

(6) basic restorative services; and

(7) residents' rights.

(h) A NATCEP must have an approved program director who meets the requirements of §151.6(a) of this title (relating to Program Director and Skills Examiner Requirements).

(i) A NATCEP must ensure that trainees:

(1) complete at least the first 16 hours of training (Section I of the curriculum) prior to any direct contact with a resident;

(2) perform only those services for which they have been trained and found to be proficient by an instructor;

(3) who are performing skills on individuals as part of a NATCEP are under the direct supervision of a licensed nurse; and

(4) who are providing services to a resident are under the general supervision of a licensed nurse.

(j) A NATCEP must notify the department of any substantive change in any information presented by a NATCEP in an approved application including but not limited to ownership, classroom location, clinical training site, program director, course content, or scheduled number of clock hours of the course. Such changes shall be approved by the department prior to the NATCEP's effective date of the change. If, due to special circumstances, a NATCEP cannot notify the department of a change prior to the effective date of the change, the department shall be notified immediately and shall approve the change if the change complies with the Act and this chapter.

(k) Each NATCEP shall use a performance record developed by the department of major duties/skills taught. The record shall consist of, at a minimum, a listing of the duties/skills expected to be learned in the NATCEP, space to record when the trainee performs this duty/skill, and spaces to note satisfactory or unsatisfactory performance, and the name of the instructor supervising the performance. At the completion of the NATCEP, the trainee and his/her employer (if applicable) will receive a copy of the record.

(l) The NATCEP shall maintain records which shall be available to the department or its designees at any reasonable time and which shall include for each new session of the NATCEP at least the:

(1) dates and times of all classroom and clinical hours;

(2) full name and social security number of each trainee;

(3) attendance record of each trainee; and

(4) final course grade for the training portion of the NATCEP indicating pass or fail for each trainee.

(m) At the request of a trainee who has successfully completed the training portion of a NATCEP, the NATCEP shall issue a certificate of completion or a letter on letterhead stationery stating that the trainee has completed the NATCEP. The document shall include at least the date of completion of the NATCEP, the total hours of training, the official NATCEP name and number on file with the department, and the signature of the program director.

(n) Each NATCEP must meet the requirements of this chapter and include the competency evaluation program specified in §151.5(b) and (d)-(o) of this title (relating to Competency Evaluation Program Requirements).

(o) A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the nurse aide begins a NATCEP may not be charged for any portion of the NATCEP (including any fees for textbooks or other required course materials).

(p) If an individual does not fall under subsection (o) of this section, but becomes employed as a nurse aide by, or receives an offer of employment as a nurse aide from a facility not later than 12 months after completing a NATCEP, the state must provide for the reimbursement of costs incurred in completing the NATCEP on a pro rata basis during the period in which the individual is employed as a nurse aide.

(q) Each trainee shall be clearly identified as a trainee during the clinical training.

(r) The ratio of instructors to trainees in skills and clinical training must ensure that each trainee is provided safe and effective assistance and supervision.

(s) Each NATCEP shall primarily provide educational and training opportunities for the trainee(s) rather than primarily provide nursing or nursing-related services to the facility, its residents or clients.

(t) The graduates' success rate on the examination will be monitored by the department and may be utilized as a criteria for withdrawing NATCEP approval.

(u) No NATCEP shall be operated and no trainee shall be solicited or enrolled until the department has approved the NATCEP.

(v) Approval of a NATCEP by the department is granted to

cover only approval of the required curriculum and hours and should not be considered approval of additional content or hours.

(w) An orientation NATCEP required under federal or state law, other than the Act, given by a facility to a nurse aide employed in the facility shall be separate from and shall not constitute a part of a NATCEP.

§151.5. Competency Evaluation Program (CEP) Requirements.

(a) All examinations shall be administered by the department or its designee to individuals who have successfully completed the training portion of a nurse aide training competency evaluation program (NATCEP) or are eligible to take a free-standing CEP under subsection (c)(1) of this section.

(b) Requirements for the competency evaluation portion of a NATCEP are as follows.

(1) A trainee is eligible to take the competency evaluation portion of a NATCEP if he or she has successfully completed the training portion of a NATCEP as determined by the program director.

(2) An eligible trainee shall take the examination as part of the same NATCEP. If it is not possible to test with the same NATCEP, a nurse aide may take the examination at another approved facility or NATCEP which has volunteered to serve as an examination site.

(3) A trainee who does not test with the same NATCEP must obtain from the program director an original certificate or letter described in §151.4(m) of this title (relating to NATCEP Requirements) to present to the skills examiner prior to taking the examination.

(c) Requirements for the free-standing CEP are as follows.

(1) An individual is eligible to take a CEP if he or she completes the documentation required by the department and:

(A) falls under §151.12 of this title (relating to Requirements for Retraining);

(B) successfully completes the training portion of a NATCEP approved under the Act by or in another state;

(C) successfully completes military training of 100 hours or more on or after July 1, 1989, equivalent to civilian nurse aide training;

(D) successfully completes a state accredited register nurse (RN) or licensed vocational nurse (LVN) program on or after July 1, 1989, and:

(i) is not licensed as a RN or LVN; and

(ii) has not held a license as a RN or LVN which has been revoked;

(E) is currently enrolled in a state accredited school of nursing and has demonstrated competency in providing basic nursing skills in accordance with the school's curriculum; or

(F) successfully completes a home health aide training and competency evaluation program in accordance with federal law and approved by the state.

(2) An eligible individual shall take the CEP at an approved facility or NATCEP.

(3) An eligible individual shall receive an original letter of approval to take a CEP signed by the department. This letter must be presented to the skills examiner prior to the examination.

(d) The responsibilities of an approved facility or NATCEP serving as an examination site are to:

(1) provide the facility where the skills examination and the location where the written or oral examination will be given;

(2) offer the examination to its own trainees promptly after successful completion of the training portion if a NATCEP;

(3) offer the examination to an eligible examinee who is employed by or has received an offer of employment from the facility if the individual desires to be examined at the facility;

(4) offer the examination to other eligible examinees whom the facility or NATCEP has voluntarily accepted for the examination;

(5) schedule examinations and retests with the department's designee; and

(6) assure that applications for examination are completed accurately.

(e) The responsibilities of the examinee are to:

(1) take the examination:

(A) with the NATCEP where the examinee was trained;

(B) at an approved facility from which the individual has received an offer of employment or is employed; or

(C) at an approved facility or NATCEP which has volunteered to accept the examinee for examination;

(2) verify the arrangements for examination with the examination site;

(3) present the completed application for examination and documentation required under subsection (b)(3) or (c)(3) of this section to the skills examiner prior to the examination;

(4) request a retest if the examinee fails the examination; and

(5) meet other procedural requirements specified by the department or its designee.

(f) The responsibilities of the department or its designees are to:

(1) provide instructions and eligibility forms to applicants for a CEP and provide a letter of approval under subsection (c)(3) of this section;

(2) assist an eligible examinee to find an approved facility or NATCEP to serve as an examination site;

(3) schedule examinations and retests for the requesting approved facility or NATCEP; and

(4) conduct and administer examinations and report results of examinations as required by the department.

(g) The examination shall consist of:

(1) the skills examination which includes a demonstration by the trainee of a minimum of five randomly selected skills drawn from a pool of skills which are generally performed by nurse aides and are listed on the performance record. This pool of skills includes all of the personal care skills listed in the curriculum; and

(2) the written or oral examination which includes 50 multiple choice questions selected from a pool of test items which address each course requirement in the curriculum. The written examination questions are printed in a test booklet with a separate answer sheet. The oral examination is a tape-recorded presentation read from a prepared text in a neutral manner which includes additional questions to test reading comprehension.

(h) At the nurse aide's option, the nurse aide may establish competency under this section by successful completion of:

(1) a skills examination or an examination for a handicapped or disabled individual equivalent to the skills examination; and

(2) a written examination in English, an oral examination in English or

Spanish, or an examination for a handicapped or disabled individual equivalent to the written or oral examination.

(i) Successful completion of the examination consists of:

(1) achieving a passing grade on the skills examination as determined by the department; and

(2) achieving a passing grade on the written or oral examination as determined by the department.

(j) A person who fails the skills examination or the written or oral examination may retest twice on the failed examination.

(1) The person shall be advised of the areas which he or she did not pass.

(2) The person must request re-examination through the approved facility, NATCEP or the department's designee.

(3) The department is not required to set special re-examination schedules.

(4) After failing the examination three times, the individual must complete the training portion of a NATCEP prior to retesting.

(k) The state must advise in advance any individual who takes the examination that a record of the successful completion of the examination will be included in the nurse aide registry.

(l) A record of successful completion of the examination must be included on the registry within 30 days of the date the examination was passed.

(m) An examination shall not be offered by or in a facility if the facility falls within any of the provisions of §151.4(e) of this title (relating to NATCEP Requirements).

(n) A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the nurse aide begins a CEP may not be charged for any portion of the CEP.

(o) If an individual does not fall under subsection (n) of this section, but becomes employed as a nurse aide by, or receives an offer of employment as a nurse aide from a facility not later than 12 months after completing a CEP, the state must provide for the reimbursement of costs incurred in completing the CEP on a pro rata basis during the period in which the individual is employed as a nurse aide.

§151.6. Program Director and Skills Examiner Requirements.

(a) Program director. The training of nurse aides must be performed by or

under the general supervision of an approved program director. Each approved nurse aide training and competency evaluation program (NATCEP) must have an approved program director.

(1) The program director must:

(A) be licensed as a registered nurse in the State of Texas;

(B) have a minimum of two years of nursing experience, at least one year of which must be in the provision of long term care facility services; and

(C) have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides.

(2) In a facility-based NATCEP, the director of nursing for the facility may be approved as the program director but is prohibited from performing the actual training.

(3) A program director may supervise more than one NATCEP.

(4) The responsibilities of the program director shall include but not be limited to:

(A) directing the NATCEP in compliance with the Act and this chapter;

(B) teaching the NATCEP and/or supervising supplemental trainers;

(C) assuring that NATCEP records are maintained;

(D) determining if trainees have met the NATCEP requirements;

(E) signing an application for examination for each trainee who has passed the NATCEP and has completed the department's application; and

(F) notifying the department of the date the program director ceases to be a program director for a specific NATCEP and the date the program director starts as a program director for another NATCEP.

(5) A program director shall complete an application for approval. An applicant who meets the requirements of this subsection shall be approved as a program director.

(b) Supplemental trainers. Other personnel from the health professions may supplement the instructor, including, but not limited to, registered nurses, licensed vocational nurses, pharmacists, dietitians, social

workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech-language pathologists, audiologists, and resident rights experts.

(1) A supplemental trainer must have at least one year of experience in his or her field of instruction.

(2) A supplemental trainer may be listed on the NATCEP application but does not need approval from the department in order to instruct.

(3) Each supplemental trainer shall be selected and supervised by the program director.

(c) Skills examiner. The competency evaluation of a nurse aide must be conducted by an approved skills examiner.

(1) A skills examiner must:

(A) be licensed as a registered nurse in the State of Texas;

(B) have completed a minimum of one year of professional experience in providing care for the elderly or chronically ill of any age;

(C) have completed a skills training seminar conducted by the department or its designee; and

(D) not be an employee of:

(i) the facility where an examination is given by the skills examiner;

(ii) the facility which gave the NATCEP to the person being examined by the skills examiner; or

(iii) a facility with a contractual or corporate relationship to a facility described in clauses (i) or (ii) of this subparagraph.

(2) A skills examiner shall be responsible for:

(A) adhering to the department's standards for each skill examined;

(B) conducting the examination in an objective manner according to the criteria established by the department;

(C) validating the examination results on form(s) prescribed by the department; and

(D) submitting prescribed forms and reports to the department or its designee.

(3) A skills examiner shall complete an application for approval. An applicant who meets the requirements of this subsection shall be approved as a skills examiner.

§151.7. Filing and Processing Applications for Nurse Aide Training and Competency Evaluation Program (NATCEP), Program Director and Skills Examiner.

(a) An applicant must submit a request for approval on official forms prescribed by the Texas Department of Health (department) which:

(1) are original documents signed by the applicant or authorized representative;

(2) are typed or printed in ink with all pages clearly legible; and

(3) are notarized as requested by the department.

(b) The department shall consider whether the applicant complies with the Act and this chapter.

(c) Incomplete or deficient applications may cause delays in the date of approval.

(1) A notice of deficiency in the application will be mailed to an applicant within 15 days of the date of filing.

(2) The applicant will be given an opportunity to correct any deficiencies.

(d) Notice of approval or proposed disapproval of the application will be given to the applicant within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Act or this chapter, the reason for disapproval shall be given in the notice.

(e) An applicant for approval of a NATCEP may request a hearing on a proposed disapproval in writing within 20 days of the date the notice is mailed or personally delivered to the applicant. The hearing shall be scheduled to commence within 30 days of the department's receipt of the applicant's request for a hearing and shall be in accordance with Chapter 1 of this title (relating to Board of Health) and the Administrative Procedure and the Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(f) An applicant for approval as a program director or skills examiner may request a hearing on a proposed disapproval in writing within 20 days of the date the notice is mailed or personally delivered to the applicant.

(1) A hearing shall be conducted by a hearing examiner in the same manner as set forth in §151.11(c)(1)-(10) of

this title (relating to Registry; Findings; Inquiries).

(2) The hearing examiner shall prepare a written recommendation for decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions of the Act and this chapter. The recommendation shall state the reason for the recommendation and include findings of fact and conclusions of law.

(A) The recommendation shall be provided to the department and the program director or skills examiner applicant who may file exceptions.

(B) The recommendation and any exceptions shall be submitted to the commissioner of health or his or her designee for final decision.

(C) The final decision shall be made as soon as possible after the close of the hearing.

(g) If no timely request for a hearing is made by an applicant, the applicant is deemed to have waived the opportunity for a hearing and the proposed action may be taken.

(h) If an applicant who has requested a hearing fails to appear or be represented at the scheduled hearing, the applicant is deemed to have waived the opportunity for a hearing and the proposed action may be taken.

§151.8. Approval, Reapproval and Inspection of a Nurse Aide Training and Competency Evaluation Program (NATCEP).

(a) Initial approval of a NATCEP shall be made on the basis of the application submitted to the Texas Department of Health (department).

(b) Approval of a NATCEP is granted for a period of two years.

(c) If substantive changes described in §151.4(j) of this title (relating to Nurse Aide Training Competency Evaluation Program Requirements) are made to a NATCEP within the two year period, the NATCEP must notify the department and the department must review the NATCEP. An on-site review by the department may be necessary.

(d) The department shall send a notice of renewal and a renewal application form to a NATCEP at least 60 days prior to the expiration date of the NATCEP approval.

(e) A NATCEP must file the renewal application form before the expiration date of the NATCEP approval. A NATCEP which makes timely application

for renewal may continue to train. A NATCEP which files the renewal application form after the expiration date may not train until the renewal application form is approved by the department.

(f) After receipt of the completed renewal application form, the department shall schedule and conduct an on-site review of the NATCEP to determine if the NATCEP is in compliance with the requirements of the Act and this chapter.

(g) The department may conduct an on-site review of a NATCEP at any reasonable time.

(h) The department shall present to a NATCEP a written report of the results of any on-site review summarizing any violations of or non-compliance with the Act or this chapter.

(1) The NATCEP must submit a written response to the department which includes a plan of action to correct all violations or noncompliance and the results of such action.

(2) The department may direct a NATCEP to comply with the requirements of the Act and this chapter.

(3) A NATCEP not meeting the requirements of the Act and this chapter may be subject to further on-site reviews or proposed disapproval or withdrawal of approval.

§151.9. Withdrawal of Approval of a Nurse Aide Training and Competency Evaluation Program (NATCEP), Program Director and Skills Examiner.

(a) Approval of any NATCEP, program director, or skills examiner may be withdrawn for any violation of or noncompliance with the Act or this chapter.

(b) The department shall withdraw approval of a NATCEP if the NATCEP refuses to permit unannounced visits by the state.

(c) The department shall withdraw approval of a NATCEP offered by or in a facility which falls within a prohibition in §151.4(e) of this title (relating to NATCEP Requirements).

(d) If the department proposes to withdraw approval of any NATCEP, program director, or skills examiner, the department shall notify the NATCEP, program director, or skills examiner by mail at the last known address as shown in the department's records or by personal delivery. The notice must state the facts or conduct alleged to warrant the action and state that the individual has an opportunity to request in writing a hearing.

(e) The NATCEP or individual notified may request a hearing within 20 days

of the date the notice is mailed or personally delivered to the individual. This request shall be in writing and submitted to the Program Administrator, Nurse Aide Training and Registry Program at the department.

(f) A hearing for a NATCEP shall be scheduled to commence within 30 days from the department's receipt of the request for a hearing and shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Chapter 1 of this title (relating to Board of Health).

(g) If a skills examiner or program director makes a timely request for a hearing, the hearing process and decision shall be as stated in §151.7(f) of this title (relating to Filing and Processing Applications for NATCEP, program director and skills examiner).

(h) If the NATCEP or individual does not request a hearing in writing, the NATCEP or individual is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(i) If the NATCEP or individual fails to appear or be represented at the scheduled hearing, the NATCEP or individual is deemed to have waived the opportunity for a hearing and the action may be taken.

(j) Students who have started a NATCEP from which approval is proposed to be or has been withdrawn shall be allowed to complete the NATCEP.

§151.10. Waiver and Reciprocity Requirements.

(a) A nurse aide shall be deemed to be competent and shall be placed on the registry by waiver of the requirements if the individual:

(1) was found to be competent (whether or not by the State of Texas) before July 1, 1989, after completion of a nurse aide training course of at least 100 hours duration; and

(2) has completed the documentation required by the Texas Department of Health (department).

(b) A nurse aide who is on a registry in another state shall be placed on the registry by reciprocity if the individual:

(1) is currently on the nurse aide registry in another state which has a NATCEP for training and competency evaluation of nurse aides which is in compliance with the Act; and

(2) has completed the documentation required by the department.

(c) A person who requests to be placed on the registry by waiver or reci-

procuity is not qualified to be used as a nurse aide under §151.3 (a), (c), or (e) of this title, even for less than four months, until the person can prove that he or she has been approved for or has been placed on the registry or unless the person enrolls in a nurse aide training competency evaluation program (NATCEP).

§151.11. Registry; Findings; Inquiries.

(a) The Texas Department of Health (department) shall establish and maintain a registry of all individuals who qualify under §151.3(a)(2) of this title (relating to Facility Requirements). Each individual listed on the registry shall keep the department informed of his or her current address and telephone number.

(b) A nurse aide shall provide documentation to the department every 24 months using a form provided by the department that the nurse aide has performed nursing or nursing-related services or acted as a nurse aide for monetary compensation for any period of time within the previous 24 months. The department shall remove a registry entry for an individual who does not provide such documentation, unless a finding of abuse, neglect, or misappropriation of resident property is on the registry for that individual.

(c) The department shall review and investigate allegations of neglect, abuse, or misappropriation of resident property by a nurse aide. A nurse aide shall be given written notice by the department of a proposed finding on an allegation and must request, in writing, a hearing within 20 days of the date the notice is mailed or personally delivered to the nurse aide or the right to a hearing shall be waived, and the department may reach a finding on the allegation without a hearing.

(1) When a timely written request for a hearing is received by the department, the department's Professional Licensing and Certification Division of the department shall request the department's Office of General Counsel to appoint a hearing examiner to conduct the hearing.

(2) At least 10 days prior to a hearing, the hearing examiner shall send a written notice to the nurse aide stating the department's proposed findings on an allegation and the time, date and place of the hearing.

(3) At the request of the nurse aide and if it is to be used at the hearing, a copy of the department's investigative report concerning the incident which is the subject of the hearing shall be provided by the hearing examiner to the nurse aide. Any portions of the report which do not pertain to the incident shall not be disclosed to the nurse aide or used at the hearing.

(4) The hearing shall not be governed by the Administrative Procedure and Texas Register Act and the Texas Rules of Civil Evidence.

(5) The nurse aide shall have the opportunity to refute the basis for the proposed findings, to offer verbal and written testimony on his or her behalf, to call and examine witnesses, and to cross-examine witnesses.

(6) The nurse aide may represent himself or herself or be represented by counsel.

(7) All testimony shall be given under oath.

(8) A record shall be made of the proceedings, either by tape recording, stenographic method, or both. Either party may employ a court reporter or obtain a transcript at the expense of the requesting party.

(9) The burden shall be upon the department to prove by a preponderance of the evidence the truth of the allegations.

(10) The department shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(11) The hearing examiner, upon completion of the hearing, shall prepare a written decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions of the Act and this chapter. The decision shall state the reasons for the decision and include findings of fact and conclusions of law. The decision shall be made within 60 days from the department's receipt of the request for a hearing. The 60 day period shall be tolled for the period of any continuance granted by the hearing examiner.

(12) If the nurse aide fails to appear or be represented at the scheduled hearing, the department may reach a finding on the allegation without a hearing.

(13) The registry, the nurse aide, and the administrator of the facility where the event occurred shall be notified of the findings.

(14) The registry shall include the documented findings involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings.

(d) The information in the registry shall be made available to the public.

(e) The department, in the case of inquiries to the registry, shall verify if the individual is listed in the registry and shall disclose any information concerning a finding of resident neglect, resident abuse, or misappropriation of resident property in-

volving an individual listed in the registry. It shall also disclose any statement by the individual related to the finding or a clear and accurate summary of such a statement.

§151.12. Requirements for Retraining. If there has been a continuous period of 24 consecutive months after completion of a NATCEP during none of which a person performed nursing or nursing-related services or acted as a nurse aide for monetary compensation, the person shall complete a new nurse aide training and competency evaluation program (NATCEP) or a new competency evaluation program (CEP).

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 January 27, 1992.

TRD-9201189

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: March 15, 1992

For further information, please call: (512) 834-6628

◆ ◆ ◆
TITLE 28. INSURANCE
Part I. Texas Department
of Insurance
Chapter 5. Property and
Casualty Insurance
Subchapter K. Commercial
Multi-Peril Policies

• **28 TAC §5.9101**

The Texas Department of Insurance proposes new §5.9101, concerning commercial multi-peril policies. This section sets out the lines of insurance which may be included in the commercial multi-peril policy, and provides for the filing of rates and policy forms with the Texas Department of Insurance.

Lyndon Anderson, deputy commissioner, Property Division, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Anderson 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 providing flexibility for insurers and insureds in obtaining commercial multi-peril insurance. 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 Lyndon Anderson, Deputy Commissioner, Property Division, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed under the Texas Insurance Code, Article 5.81, which pro-

vides the Texas Department of Insurance with the authority to approve policy forms and rates for multi-peril policies of insurance and to make rules as are necessary and desirable to carry out the purposes of this article.

§5.9101. Multi-Peril Policies.

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

(1) Filer—An insurer that files rates, prospective loss costs, or supplementary rating information under this section.

(2) Insurer—Every insurance company, corporation, interinsurance exchange, mutual, reciprocal, association, Lloyds or other organization or insurer writing any of the characters of insurance business herein set forth in this section, but does not include the Texas Catastrophe Property Insurance Association or any county or farm mutual insurance company or association as regulated under the Texas Insurance Code, Chapters 16 and 17. However, the provisions of subsections (c), (d), and (e) of this section shall not apply to Lloyds.

(3) Prospective loss costs—That portion of a rate that does not include provisions for profit or expenses, other than loss adjustment expenses, that is based on historical aggregate losses and loss adjustment expenses projected by development to their ultimate value and through trending to a future point in time.

(4) Rate—The cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, before any application of individual risk variations based on loss or expense considerations. The term does not include a minimum premium.

(5) Supplementary rating information—Any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information required by the State Board of Insurance to determine the applicable premium for an insured. For the multi-peril package policy with a divisible premium, the supplementary rating information must be submitted for each line of insurance included. The term includes factors and relativities, such as increased limits factors, classification relativities, deductible relativities, or other similar factors.

(6) Supporting information—

(A) the experience and judgment of the filer and the experience or

information of other insurers or advisory organizations relied on by the filer;

(B) the interpretation of any other information relied on by the filer;

(C) descriptions of methods used in making the rates; and

(D) any other information required by the State Board of Insurance to be filed.

(b) Commercial multi-peril package policy. Insurers which write lines of insurance covered by the Texas Insurance Code, Chapter 5, may include coverage for any two or more of the following lines of insurance in a commercial multi-peril package policy with rates filed and forms approved pursuant to the provisions of this section:

- (1) general liability;
- (2) commercial property;
- (3) boiler and machinery;
- (4) commercial crime;
- (5) commercial glass; and
- (6) inland marine.

(c) Rate standards.

(1) Rates for commercial multi-peril package policies under this section shall be made in accordance with the provisions of this subsection.

(2) In setting rates, an insurer shall consider:

(A) past and prospective loss experience inside and outside this state;

(B) any applicable catastrophe hazards;

(C) operation expenses;

(D) investment income;

(E) a reasonable margin for profit and contingencies; and

(F) any other relevant factors inside and outside this state.

(3) An insurer may group risks by classifications for the establishment of rates and minimum premiums and may modify classification rates to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in those risks on the basis of any factor listed in paragraph (2) of this subsection.

(4) Rates may not be excessive, inadequate, or unfairly discriminatory and may not be unreasonable.

(5) In setting rates applicable solely to policyholders in this state, an insurer shall use available premium, loss, claim, and exposure information from this state to the full extent of the actuarial credibility of that information. The insurer may use experience from outside this state as necessary to supplement information from this state that is not actuarially credible.

(d) Rate filings.

(1) For each line of insurance included in a commercial multi-peril package policy with a divisible premium, each insurer shall file with the State Board of Insurance all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state. For each commercial multi-peril package policy with an indivisible premium based on the loss experience under such package policy as a whole, each insurer shall file with the State Board of Insurance all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state.

(2) If the State Board of Insurance determines after a hearing that an insurer's rates require supervision because of the insurer's financial condition or the insurer's rating practices, the State Board of Insurance may require the insurer to file with the State Board of Insurance all rates, supplementary rate information, and any supporting information prescribed by the State Board of Insurance.

(3) An insured that is aggrieved with respect to any filing in effect, or the public insurance counsel, may make a written application to the State Board of Insurance for a hearing on the filing. The application must specify the grounds on which the applicant bases the grievance. If the State Board of Insurance finds that the application is made in good faith, that the applicant would be so aggrieved if the grounds in the application are established, and that those grounds otherwise justify holding the hearing, the State Board of Insurance shall hold a hearing not later than the 30th day after the date of receipt of the application. The State Board of Insurance shall give at least 10 days' written notice to the applicant and to each insurer that made the filing in question.

(4) If, after the hearing, the State Board of Insurance finds that the filing does not meet the requirements of this section, the State Board of Insurance shall issue an order specifying how the filing fails to meet the requirements of this section and stating the date on which, within a reasonable period after the order date, the filing is no longer in effect. The State Board

of Insurance shall send copies of the order to the applicant and to each affected insurer.

(5) Each insurer subject to this section shall file with the State Board of Insurance, on a quarterly basis, information relating to changes in losses, premiums, and market share since January 1, 1993.

(6) Each filing and any supporting information filed under this section, is open to public inspection as of the date of the filing.

(e) Disapproval.

(1) The State Board of Insurance shall disapprove a rate if the State Board of Insurance determines that the rate filing made under this section does not meet the standard established under this section.

(2) If the State Board of Insurance disapproves a filing, the board shall issue an order specifying in what respects the filing fails to meet the requirements of this section. Upon written request made to the State Board of Insurance, the filer is entitled to a hearing not later than the 30th day after the effective date of the disapproval order.

(3) If the State Board of Insurance disapproves a rate that is in effect, the board may issue a disapproval order only after a hearing held after at least 20 days' written notice to the insurer that made the filing. The disapproval order shall be issued not later than the 15th day after the close of the hearing and shall specify how the rate fails to meet the requirements of this section. The disapproval order shall state the date on which the further use of that rate is prohibited. The board shall set the date not earlier than the 45th day after the date on which the hearing closes.

(f) Forms.

(1) A commercial multi-peril package policy or printed endorsement for use in connection with a commercial multi-peril package policy described in subsection (b) of this section may not be delivered or issued for delivery in this state unless the form has been filed with and approved by the State Board of Insurance.

(2) Each filing shall be made not later than the 60th day before the date of any use or delivery for use. At the expiration of the 60-day period a filed form is approved unless, before the expiration of the 60 days, the State Board of Insurance approves or disapproves the form by order. Approval of a form by the State Board of Insurance constitutes a waiver of any unexpired portion of the 60-day period. The State Board of Insurance may extend by not more than an additional 60 days the period during which it may approve or disapprove a form by giving notice to the filer of the extension before the expiration of the initial

period. At the expiration of any extension and in the absence of any earlier approval or disapproval, the form shall be considered approved. For good cause shown, the State Board of Insurance may withdraw its approval at any time after notice and a hearing.

(3) An order of the State Board of Insurance disapproving any form or any notice of the State Board of Insurance's intention to withdraw a previous approval shall state the grounds for the disapproval in enough detail to reasonably inform the filer of the grounds. An order of withdrawal of a previously approved form takes effect on the expiration of the prescribed period, but not sooner than the 30th day after the effective date of the withdrawal order, as prescribed by the State Board of Insurance.

(4) An insurer may not use in this state any form after disapproval of the form or withdrawal of approval by the State Board of Insurance.

(5) If the State Board of Insurance promulgates standard commercial multi-peril insurance forms, endorsements, and other related forms, an insurer, at its discretion may use these forms instead of the insurer's own forms for writing commercial multi-peril insurance. Forms submitted by insurers for approval under this subsection must provide coverage equivalent to that provided in the policy and endorsement forms used for these lines of coverages on the effective date of this section. An endorsement may not reduce coverage provided under the approved policy form.

(g) Additional lines of insurance.

(1) In addition to the lines of insurance enumerated in subsection (a) of this section, one or more of the following lines of insurance may also be included in a multi-peril package policy:

(A) professional liability;

(B) commercial automobile.

(2) The rates and policy forms for the lines of insurance enumerated in paragraph (1) of this subsection shall be those rates and forms approved in the manner provided by the Texas Insurance Code, Article 5.15 for professional liability and Articles 5.101 and 5.06 for commercial automobile and/or garagekeeper and garage liability insurance. Policy forms and endorsements for these lines of insurance shall be self-contained and severed from all other coverages under the multi-peril policy.

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 January 23, 1992.

TRD-9201073 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: March 2, 1992

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.1

The Texas Air Control Board (TACB) proposes an amendment to §101.1, concerning definitions. Fourteen new definitions and modifications of four existing definitions are proposed. The amendments are based on the latest interpretation by the Environmental Protection Agency (EPA) of the various provisions in the amended Federal Clean Air Act (FCAA) which changed new source review (NSR) requirements for new and modified sources in nonattainment areas. These changes include the minimum changes the state of Texas must make in the State Implementation Plan (SIP) in order to comply with the amended NSR requirements and the federal deadlines for making these changes. In addition, parts of the new definitions update the section for consistency with current EPA policy. Table I under the definition of "synthetic organic chemical manufacturing process" is redesignated as Table II to accommodate a new Table I under the definition of "major modification."

The FCAA-mandated deadlines for NSR SIP submittals are May 15, 1992, for sulfur oxides, nitrogen dioxide, and lead nonattainment areas; June 30, 1992, for inhalable particulate matter nonattainment areas; November 15, 1992, for ozone nonattainment areas and transport regions; and November 15, 1992, for carbon monoxide nonattainment areas with design values of 12.7 parts per million or less. The proposed amendments apply both in designated nonattainment areas and in ozone transport regions. Most revisions to the NSR requirements regarding the prevention of significant deterioration (PSD) program, under the FCAA, Title I, Part C, will be addressed by the TACB in separate rulemaking when additional PSD guidance is received from EPA.

Lane Hartsock, deputy director of air quality planning, has determined that for the first five-year period the proposed definitions will be in effect, there will be no fiscal implications for state and local units of government as a result of administering the section.

Mr. Hartsock also has determined that for the first five-year period the proposed definitions are in effect, the public benefit anticipated as

a result of enforcing the section would be an improved understanding by the regulated community of the terms commonly used in the permitting and enforcement activities of the agency. There will be no effect on small businesses. There are no anticipated costs to persons who must comply with the section.

A public hearing on this proposal is scheduled for 1 p.m. on February 25, 1992, in the auditorium of the City of Houston Pollution Control Building located at 7411 Park Place Boulevard, Houston. Another public hearing on this proposal is scheduled for 2 p.m. on February 27, 1992, in Room 143-E of the central office of the TACB located at 12124 Park 35 Circle, Austin. Public comment, both oral and written, on the proposed changes is invited at the hearings.

Written comments not presented at these hearings may be submitted to the TACB central office in Austin through February 28, 1992. Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposed exemptions, and a comprehensive discussion of the exemption changes are available at the central office of the TACB located at 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. For further information, contact Barry Irwin at (512) 908-1461.

The amendments are proposed for adoption under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§101.1. Definitions. Unless specifically defined in the Act or in the rules of the Board, the terms used by the Board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the Texas Clean Air Act, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Actual emissions (applies only to nonattainment area new source review rules Pursuant to Federal Clean Air Act Provisions)—Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which preceded the particular date and which is representative of normal source operation. The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

Allowable emissions (applies only to nonattainment area new source review rules pursuant to Federal Clean Air Act provisions)—The emissions rate of a stationary source, calculated using the maxi-

imum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation or both), and the most stringent of the applicable standards set forth in 40 Code of Federal Regulations (CFR) Part 60 or 61, or the emissions rate specified as a federally enforceable Permit condition.

Begin actual construction (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)—In general initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground [pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Building, structure, facility, or installation (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act Provisions)—All of the pollutant-emitting activities which belong to the same industrial grouping (2 digit code from the *Standard Industrial Classification Manual 1972*, as amended by the 1977 supplement), are located in one or more contiguous or adjacent properties and are under the control of the same person (or persons under common control).

Commence (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)—As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has begun a continuous program of actual on-site construction of the source or has entered into binding agreements or contractual obligations to undertake a pro-

gram of actual construction of the source to be completed within a reasonable time.

Construction (applies only to nonattainment area new source review rules pursuant to Federal Clean Air Act provisions)—Any physical change or change in the method of operation (including fabrication, erection, installation, demolition or modification of an emissions unit) which would result in a change in actual emissions.

De minimis threshold—(In regard to any proposed emissions increase in a specific nonattainment area) an emissions level as determined by aggregating the proposed increase with all other creditable source emission increases and decreases during the previous five calendar years including the calendar year of the proposed change which equals the major modification level (in tons) for that specific nonattainment area. Table I of §101.1 of this section, specifies the various classifications of nonattainment along with the associated emission levels which designate a major modification for those classifications.

Emissions unit—Any Part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act.

Federally enforceable—All limitations and conditions which are enforceable by the administrator or executive director, including those requirements developed pursuant to 40 Code of Federal Regulations CFR) Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51 Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and that expressly requires adherence to any permit issued under such program.

Fugitive emission—Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass [without first passing] through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

Major facility/stationary source (applies only to nonattainment area new source review rules pursuant to Federal Clean Air Act Provisions) [(used solely for the purpose of determining the applicability of nonattainment area new source review under provisions of the Federal Clean Air Act)]—Any facility/stationary source which emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section [100 tons per year] or more of any air contaminant (including volatile organic compounds) for which a National Ambient Air Quality Standard has been issued.

Major modification (applies only to new source review rules pursuant to Federal Clean Air Act provisions) [(used solely for the purpose of determining the applicability of New Source Review under provisions of the Federal Clean Air Act)]—Any physical change in, or change in the method of operation of:

(A) a facility/stationary source that causes a net increase of [increases by 100 tons per year] its potential to emit volatile organic compounds (VOC) or any air contaminant for which a National Ambient Air Quality Standard has been issued by the amount listed in the MAJOR SOURCE column of Table I of this section; or

(B) a major facility/stationary source that would result in a net increase in its potential to emit VOC or any air contaminant for which a national ambient air quality standard has been issued by an amount equal to or greater than that specified in the MAJOR MODIFICATION column of Table I [following table].

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

<u>POLLUTANT</u>	<u>MAJOR SOURCE tons/year</u>	<u>MAJOR MODIFICATION net increase in tons/year</u>	<u>OFFSET RATIO minimum</u>
<u>VOC/NO_x</u> ¹			
<u>I marginal</u>	<u>100</u>	<u>40</u>	<u>1.10 to 1</u>
<u>II moderate</u>	<u>100</u>	<u>40</u>	<u>1.15 to 1</u>
<u>III serious</u>	<u>50</u>	<u>25</u>	<u>1.30 to 1</u>
<u>IV severe</u>	<u>25</u>	<u>25</u>	<u>1.30 to 1</u>
<u>CO</u>			
<u>I moderate</u>	<u>100</u>	<u>100</u>	<u>1.00 to 1</u> ²
<u>II serious</u>	<u>50</u>	<u>50</u>	<u>1.00 to 1</u> ²
<u>SO₂</u>	<u>100</u>	<u>40</u>	<u>1.00 to 1</u> ²
<u>PM₁₀</u>			
<u>I moderate</u>	<u>100</u>	<u>15</u>	<u>1.00 to 1</u> ²
<u>II serious</u>	<u>70</u>	<u>15</u>	<u>1.00 to 1</u> ²
<u>Lead</u>	<u>100</u>	<u>0.6</u>	<u>1.00 to 1</u> ²

¹ VOC and NO_x are to be considered separately for purposes of determining whether a source is subject to permit requirements.

² The offset ratio is specified to be greater than 1.00 to 1.

- VOC = volatile organic compound
- NO_x = oxides of nitrogen
- CO = carbon monoxide
- SO₂ = sulfur dioxide
- PM₁₀ = particulate matter of less than 10 microns in diameter

	<u>[Tons/Year</u>
VOC	40
CO	100
NO _x	40
SO ₂	40
Particulate	25
Lead	.6]

Necessary preconstruction approvals or permits (applies only to nonattainment area, new source review

rules pursuant to Federal Clean Air Act provisions)—Those federal air quality control laws and regulations and those air

quality control laws and regulations which are part of the applicable State Implementation Plan.

Net emissions increase (applies only to nonattainment area new source review rules pursuant to Federal Clean Air Act provisions)—Any emissions changes at the building, structure facility or installation in which the sum of all the changes exceeds zero.

Nonattainment area—An area which is designated "nonattainment" with respect to any air pollutant within the

meaning of the Federal Clean Air Act, §107(d).

Reconstruction (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)—Will be presumed to have taken place where the fixed capital costs of the new component exceeds 50% of the fixed capital cost of a comparable entirely new source.

Secondary emission (applies only to nonattainment area new source review rules pursuant to Federal Clean Air Act

provisions)—Emissions, except from mobile sources, which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable and impact the same general area as the stationary source or modification.

Synthetic organic chemical manufacturing process—A process that produces, as intermediates or final products, one or more of the chemicals listed in Table II [I] of this section.

TABLE II [I].

SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
20	Acetal	350	Anthraquinone
30	Acetaldehyde	360	Benzaldehyde
40	Acetaldol	370	Benzamide
50	Acetamide	380	Benzene
65	Acetanilide	390	Benzenedisulfonic acid
70	Acetic acid	400	Benzenesulfonic acid
80	Acetic anhydride	410	Benzil
90	Acetone	420	Benzilic acid
100	Acetone cyanohydrin	430	Benzoic acid
110	Acetonitrile	440	Benzoin
120	Acetophenone	450	Benzonitrile
125	Acetyl chloride	460	Benzophenone
130	Acetylene	480	Benzotrichloride
140	Acrolein	490	Benzoyl chloride
150	Acrylamide	500	Benzyl alcohol
160	Acrylic acid and esters	510	Benzyl amine
170	Acrylonitrile	520	Benzyl benzoate
180	Adipic acid	530	Benzyl chloride
185	Adiponitrile	540	Benzyl dichloride
190	Alkyl naphthalenes	550	Biphenyl
200	Allyl alcohol	560	Bisphenol A
210	Allyl chloride	570	Bromobenzene
220	Aminobenzoic acid	580	Bromonaphthalene
230	Aminoethylethanol- amine	590	Butadiene
235	p-Aminophenol	592	1-butene
240	Amyl acetates	600	n-butyl acetate
250	Amyl alcohols	630	n-butyl acrylate
260	Amyl amine	640	n-butyl alcohol
270	Amyl chloride	650	s-butyl alcohol
280	Amyl mercaptans	660	t-butyl alcohol
290	Amyl phenol	670	n-butylamine
300	Aniline	680	s-butylamine
310	Aniline hydrochloride	690	t-butylamine
320	Anisidine	700	p-tert-butyl benzoic acid
330	Anisole	710	1,3-butylene glycol
340	Anthranilic acid	750	n-butyraldehyde

TABLE II [I].
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
760	Butyric acid	1050	Crotonic acid
770	Butyric anhydride	1060	Cumene
780	Butyronitrile	1070	Cumene hydroperoxide
785	Caprolactam	1080	Cyanoacetic acid
790	Carbon disulfide	1090	Cyanogen chloride
800	Carbon tetrabromide	1100	Cyanuric acid
810	Carbon tetrachloride	1110	Cyanuric chloride
820	Cellulose acetate	1120	Cyclohexane
840	Chloroacetic acid	1130	Cyclohexanol
850	m-chloroaniline	1140	Cyclohexanone
860	o-chloroaniline	1150	Cyclohexene
870	p-chloroaniline	1160	Cyclohexylamine
880	Chlorobenzaldehyde	1170	Cyclooctadiene
890	Chlorobenzene	1180	Decanol
900	Chlorobenzoic acid	1190	Diacetone alcohol
905	Chlorobenzotrichloride	1200	Diaminobenzoic acid
910	Chlorobenzoyl chloride	1210	Dichloroaniline
920	Chlorodifluoroethane	1215	m-dichlorobenzene
921	Chlorodifluoromethane	1216	o-dichlorobenzene
930	Chloroform	1220	p-dichlorobenzene
940	Chloronaphthalene	1221	Dichlorodifluoromethane
950	o-chloronitrobenzene	1240	Dichloroethyl ether
951	p-chloronitrobenzene	1244	1,2-dichloroethane (EDC)
960	Chlorophenols	1250	Dichlorohydrin
964	Chloroprene	1270	Dichloropropene
965	Chlorosulfonic acid	1280	Dicyclohexylamine
970	m-chlorotoluene	1290	Diethylamine
980	o-chlorotoluene	1300	Diethylene glycol
990	p-chlorotoluene	1304	Diethylene glycol diethyl ether
992	Chlorotrifluoromethane	1305	Diethylene glycol dimethyl ether
000	m-cresol	1310	Diethylene glycol monobutyl ether
010	o-cresol	1320	Diethylene glycol monobutyl ether acetate
1020	p-cresol	1330	Diethylene glycol monoethyl ether
1021	Mixed cresols		
1030	Cresylic acid		
1040	Crotonaldehyde		

TABLE II [I].
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
1340	Diethylene glycol monoethyl ether acetate	1720	Ethyl bromide
1360	Diethylene glycol monomethyl ether	1730	Ethylcellulose
1420	Diethyl sulfate	1740	Ethyl chloride
1430	Difluoroethane	1750	Ethyl chloroacetate
1440	Diisobutylene	1760	Ethylcyanoacetate
1442	Diisodecyl phthalate	1770	Ethylene
1444	Diisooctyl phthalate	1780	Ethylene carbonate
1450	Dikethene	1790	Ethylene chlorohydrin
1460	Dimethylamine	1800	Ethylenediamine
1470	N,N-dimethylaniline	1810	Ethylene dibromide
1480	N,N-dimethyl ether	1830	Ethylene glycol
1490	N,N-dimethylformamide	1840	Ethylene glycol diace- tate
1495	Dimethylhydrazine	1870	Ethylene glycol dimethyl ether
1500	Dimethyl sulfate	1890	Ethylene glycol mono- butyl ether
1510	Dimethyl sulfide	1900	Ethylene glycol mono- butyl ether acetate
1520	Dimethyl sulfoxide	1910	Ethylene glycol mono- ethyl ether
1530	Dimethyl terephthalate	1920	Ethylene glycol mono- ethyl ether acetate
1540	3,5-dinitrobenzoic acid	1930	Ethylene glycol mono- methyl ether
1545	Dinitrophenol	1940	Ethylene glycol mono- methyl ether acetate
1550	Dinitrotoluene	1960	Ethylene glycol mono- phenyl ether
1560	Dioxane	1970	Ethylene glycol mono- propyl ether
1570	Dioxolane	1980	Ethylene oxide
1580	Diphenylamine	1990	Ethyl ether
1590	Diphenyl oxide	2000	2-ethylhexanol
1600	Diphenyl thiourea	2010	Ethyl orthoformate
1610	Dipropylene glycol	2020	Ethyl oxalate
1620	Dodecene	2030	Ethyl sodium oxalace- tate
1630	Dodecylaniline	2040	Formaldehyde
1640	Dodecylphenol	2050	Formamide
1650	Epichlorohydrin	2060	Formic acid
1660	Ethanol		
1661	Ethanolamines		
1670	Ethyl acetate		
1680	Ethyl acetoacetate		
1690	Ethyl acrylate		
1700	Ethylamine		
1710	Ethylbenzene		

TABLE II [I].
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
2070	Fumaric acid	2450	Mesityl oxide
2073	Furfural	2455	Metanilic acid
2090	Glycerol (Synthetic)	2460	Methacrylic acid
2091	Glycerol dichlorohydrin	2490	Methallyl chloride
2100	Glycerol triether	2500	Methanol
2110	Glycine	2510	Methyl acetate
2120	Glyoxal	2520	Methyl acetoacetate
2145	Hexachlorobenzene	2530	Methylamine
2150	Hexachloroethane	2540	n-methylaniline
2160	Hexadecyl alcohol	2545	Methyl bromide
2165	Hexamethylenediamine	2550	Methyl butynol
2170	Hexamethylene glycol	2560	Methyl chloride
2180	Hexamethylenetetramine	2570	Methyl cyclohexane
2190	Hydrogen cyanide	2590	Methyl cyclohexanone
2200	Hydroquinone	2620	Methylene chloride
2210	p-hydroxybenzoic acid	2630	Methylene dianiline
2240	Isoamylene	2635	Methylene diphenyl diisocyanate
2250	Isobutanol	2640	Methyl ethyl ketone
2260	Isobutyl acetate	2645	Methyl formate
2261	Isobutylene	2650	Methyl isobutyl carbinol
2270	Isobutyraldehyde	2660	Methyl isobutyl ketone
2280	Isobutyric acid	2665	Methyl methacrylate
2300	Isodecanol	2670	Methyl pentynol
2320	Isooctyl alcohol	2690	a-methylstyrene
2321	Isopentane	2700	Morpholine
2330	Isophorone	2710	a-naphthalene sulfonic acid
2340	Isophthalic acid	2720	B-naphthalene sulfonic acid
2350	Isoprene	2730	a-naphthol
2360	Isopropanol	2740	B-naphthol
2370	Isopropyl acetate	2750	Neopentanoic acid
2380	Isopropylamine	2756	o-nitroaniline
2390	Isopropyl chloride	2757	p-nitroaniline
2400	Isopropylphenol	2760	o-nitroanisole
2410	Ketene	2762	p-nitroanisole
2414	Linear alkyl sulfonate	2770	Nitrobenzene
2417	Linear alkylbenzene	2780	Nitrobenzoic acid (o, m, and p)
2420	Maleic acid		
2430	Maleic anhydride		
2440	Malic acid		

TABLE II [I].
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
2790	Nitroethane	3130	Pyridine
2791	Nitromethane	3140	Quinone
2792	Nitrophenol	3150	Resorcinol
2795	Nitropropane	3160	Resorcylic acid
2800	Nitrotoluene	3170	Salicylic acid
2810	Nonene	3180	Sodium acetate
2820	Nonyl phenol	3181	Sodium benzoate
2830	Octyl phenol	3190	Sodium carboxymethyl cellulose
2840	Paraldehyde	3191	Sodium chloracetate
2850	Pentaerythritol	3200	Sodium formate
2851	n-pentane	3210	Sodium phenate
2855	1-pentene	3220	Sorbic acid
2860	Perchloroethylene	3230	Styrene
2882	Perchloromethyl mer captan	3240	Succinic acid
2890	o-phenetidine	3250	Succinonitrile
2900	p-phenetidine	3251	Sulfanilic acid
2910	Phenol	3260	Sulfolane
2920	Phenolsulfonic acids	3270	Tannic acid
2930	Phenyl anthranilic acid	3280	Terephthalic acid
2940	Phenylenediamine	3280	Terephthalic acid
2950	Phosgene	3290	
2960	Phthalic anhydride	and	
2970	Phthalimide	3291	Tetrachloroethanes
2973	B-picoline	3300	Tetrachlorophthalic anhydride
2976	Piperazine	3310	Tetraethyllead
3000	Polybutenes	3320	Tetrahydronaphthalene
3010	Polyethylene glycol	3330	Tetrahydrophthalic anhydride
3025	Polypropylene glycol	3335	Tetramethyllead
3063	Propionaldehyde	3340	Tetramethylenediamine
3066	Propionic acid	3341	Tetramethylethylene diamine
3070	n-propyl alcohol	3349	Toluene
3075	Propylamine	3350	Toluene-2,4-diamine
3080	Propyl chloride	3354	Toluene-2,4- diisocya nate
3090	Propylene	3355	Toluene diisocyanates (mixture)
3100	Propylene chlorohydrin		
3110	Propylene dichloride		
3111	Propylene glycol		
3120	Propylene oxide		

**TABLE II [I].
SYNTHETIC ORGANIC CHEMICALS**

OCPDB No.*	Chemical	OCPDB No.*	Chemical
3360	Toluene sulfonamide	3450	Triethylamine
3370	Toluene sulfonic acids	3460	Triethylene glycol
3380	Toluene sulfonyl chloride	3470	Triethylene glycol dimethyl ether
3381	Toluidines	3480	Triisobutylene
3390,		3490	Trimethylamine
3391,		3500	Urea
and		3510	Vinyl acetate
3393	Trichlorobenzenes	3520	Vinyl chloride
3395	1,1,1-trichloroethane	3530	Vinylidene chloride
3400	1,1,2-trichloroethane	3540	Vinyl toluene
3410	Trichloroethylene	3541	Xylenes (mixed)
3411	Trichlorofluoromethane	3560	o-xylene
3420	1,2,3-trichloropropane	3570	p-xylene
3430	1,1,2-trichloro-1,2,2- trifluoroethane	3580	Xylenol
		3590	Xylidine

*The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by EPA.

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 January 17, 1992.

TRD-9200959 Lane Hartssock
Air Quality Planning
Texas Air Control Board

Proposed date of adoption: May 15, 1992

For further information, please call: (512) 908-1451

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Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

• 31 TAC §§116.3, 116.4, 116.6,
116.11

The Texas Air Control Board (TACB) proposes amendments to §116.3, concerning consideration for granting permits to construct and operate; §116.4, concerning special conditions; §116.6, concerning exempted facilities; and §116.11, concerning permit fees. Amendments to §116.3 include many editorial improvements throughout subsections (a) and (c) and new provisions to reflect new source review requirements of the Federal

Clean Air Act Amendments of 1990. Subsection (a)-(7) is deleted because it does not apply to any permit issued after June 30, 1979, and paragraphs (8)-(15) are renumbered accordingly. Additional amendments add nitrogen oxide sources to the requirements in ozone nonattainment areas, refer to the new classifications of nonattainment for ozone, add a new de minimis threshold test to determine major modifications in each nonattainment classification, and add to subsections (a) and (c) a requirement to use the new offset ratios for each ozone nonattainment classification. An amendment to subsection (a), existing paragraph (9), expands the requirement for submittal of expected emissions data to all ozone nonattainment areas. Amendments to existing paragraph (12) refer to the new classifications of nonattainment and add a new de minimis threshold test to determine major modifications in each nonattainment area by classification. A new subparagraph (D) is added to existing paragraph (12) to require use of the new offset ratios for each nonattainment classification.

An amendment to §116.4 clarifies that a condition in a permit may restrict the use of standard exemptions at a facility. Amendments to §116.6 change statutory references to reflect legislative revisions to the Texas Clean Air Act, change the reference date of the Standard Exemption List to reflect proposed revisions to several exemptions, alter wording to reflect the 1990 amendments to

the Federal Clean Air Act, include as a new paragraph the same restriction on use of exemptions as proposed for §116.4, and reorder the subparts of the section as a result of the new requirements.

Proposed changes to the Standard Exemption List include amendments to nine existing standard exemptions and the addition of one new exemption. Standard Exemption Number 6 (internal combustion engines and gas turbine engines) is rewritten to impose updated emission control technology standards on exempted turbines or engines. Standard Exemption Number 7 (combustion units) is modified to clarify two conditions. Standard Exemption Number 61 (water/ wastewater treatment units) is revised for clarification and to add stringency. Standard Exemption Number 68 (soil and water remediation) is rewritten to clarify and restrict applicability. Standard Exemption Number 71 (concrete batch plants) is revised to clarify applicability and to restrict operations. Two conditions of Standard Exemption Number 76 (pilot plants) are extensively rewritten to specify more restrictive limits, and a new condition adds further limitations of plant size and period of use. Standard Exemption Number 89 (ethylene oxide sterilizing equipment/operations) is rewritten to increase stringency and clarify applicability.

Standard Exemption Number 93 (temporarily-located concrete batch plants) is revised to clarify applicability and to restrict operations.

Standard Exemption Number 100 (pipeline metering stations) is modified by specifying the pollutants to be flared and by exempting natural gas (principally methane) from applicability. A new Standard Exemption Number 123 (aerospace manufacturing facilities) is proposed to exempt from permit requirements the manufacture of components for the aerospace industry while imposing emission controls and other limits to operations similar to permitting requirements.

The proposed amendment to §116.11 would increase from \$50,000 to \$75,000 the maximum fee referenced in subsection (b)(4). The reference specifically relates to the fee to be remitted if no estimate of capital costs is included with the permit application. This increase in the maximum fee would provide consistency with the \$75,000 fee cited elsewhere in the section.

Lawrence E. Pewitt, P.E., director of the permits program, has determined that for the first five-year period the proposed rules will be in effect, there will be no fiscal implications for state or local units of government as a result of enforcing or administering the sections.

Mr. Pewitt also has determined that for of the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be improvements in the agency's permitting process with regard to federal requirements for new source review and an improved understanding by the regulated community of certain limitations on exemptions from the TACB permitting process. Some small businesses may incur permit application expenses due to the changes in the definition for major facilities and other federal requirements. There is no anticipated fiscal impact to persons as a result of enforcing or administering the sections.

A public hearing on this proposal is scheduled for 1 p.m. on February 25, 1992, in the auditorium of the City of Houston Pollution Control Building located at 7411 Park Place Boulevard, Houston, Texas. Another public hearing on this proposal is scheduled for 2 p.m. on February 27, 1992, in Room 143-E of the central office of the TACB located at 12124 Park 35 Circle, Austin. Public comment, both oral and written, on the proposed changes is invited at the hearings.

Written comments not presented at these hearings may be submitted to the TACB central office in Austin through February 28, 1992. Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposed revisions. Copies of the proposed rule revisions, the proposed exemptions, and a comprehensive discussion of the exemption changes are available at the central office of the TACB located at 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. For further information, contact Barry Irwin at (512) 908-1461.

The amendments are proposed for adoption under the Texas Clean Air Act (TCAA), §382.017 and §382.057, Texas Health and Safety Code, (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§116.3. Consideration for Granting Permits to Construct and Operate.

(a) Permit to construct. In order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board (TACB) which will demonstrate that all of the following are met.

(1) The emissions from the proposed facility will comply with all rules and regulations of the TACB and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people.

(A) In considering the issuance of a permit for construction or modification of any facility within 3,000 feet or less of an elementary, junior high/middle, or senior high school, the TACB shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending these school facilities.

(B) Pursuant to the TCAA [Texas Clean Air Act], §382.053 [§382.053], a permit to construct shall not be issued for a new lead smelting plant at a site located within 3,000 feet of the residence of any individual and at which lead smelting operations have not been conducted before August 31, 1987. This subparagraph does not apply to a modification of a lead smelting plant in operation on or before August 31, 1987, to a new lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead per hour, or to a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations. In this subparagraph, "lead smelting plant" means a facility operated as a smeltery for the processing of lead.

(2) (No change.)

(3) The proposed facility will utilize the best available control technology (BACT), with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(4) The emissions from the proposed facility will meet at least the requirements of any applicable new source performance standards promulgated by the United States Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) The emissions from the proposed facility will meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by

the EPA [Environmental Protection Agency] pursuant to authority granted under the FCAA, [Federal Clean Air Act] §112, as amended.

(6) (No change.)

[(7) All requirements of §129(a)(1) of the Clean Air Act Amendments of 1977 (Publication Law 95-95). This provision shall not apply to new or modified facilities for which construction permits are issued after June 30, 1979.]

(7)[(8)] The [After June 30, 1979, the] owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or emissions of oxides of nitrogen (NO_x), or which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the FCAA [Federal Clean Air Act], §107, shall meet [demonstrate that] the [following] additional requirements of subparagraphs (A)-(C) of this paragraph. [are met:] Table I of §101.1 of this title (relating to Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test must be applied to any proposed VOC or NO_x emissions increase in an ozone nonattainment area. The de minimis thresholds are the same as the major modification levels stated in Table I, but aggregated over the previous five-year period including the calendar year of the proposed change. The past net increase must be evaluated even when the proposed increase alone is below the major modification level.

(A) The proposed facility will comply with the lowest achievable emissions rate (LAER) as defined in §101.1 [Chapter 101 of this title (relating to General Rules)].

(B) (No change.)

(C) The proposed facility will use the offset ratio for the appropriate nonattainment classification as shown in Table I of §101.1. For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of VOC or NO_x emissions to total allowable emissions increases of such pollutants from the new source.

(8)[(9)] The [After June 30, 1979, the] owner or operator of a proposed

new facility which is a major stationary source of VOC or NO_x [volatile organic compounds (VOC)] or which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is [to be] located in a **nonattainment county for ozone shall** [Dallas, El Paso, Harris, Nueces, or Tarrant County will] provide information concerning the [his] expected emissions to enable the executive director to determine that by the time the facility is to commence operation, total allowable emissions from existing facilities, from the proposed facility, and from new or modified facilities which are not major sources in the area will be sufficiently less than the total emissions from existing sources allowed in the area under the applicable state implementation plan (SIP) as promulgated by the EPA [Administrator of the United States Environmental Protection Agency] in the Code of Federal Regulations (CFR) at 40 CFR [C.F.R.], Part 52, Subpart SS, prior to the application for the construction permit so as to represent reasonable further progress as defined in §101.1 [Chapter 101 of this title (relating to General Rules)].

(9)[(10)] The owner or operator of a proposed facility which will be a major stationary source of VOC emissions or will undergo a major modification and is [to be] located in any area designated as nonattainment for ozone in accordance with the FCAA, [Federal Clean Air Act] §107, for which regulations and a control strategy providing for attainment of the standard have not been approved by the EPA [United States Environmental Protection Agency] shall demonstrate that at the time that the facility is to commence operation a net decrease in total allowable VOC emissions in the area has been provided taking into account any increases in emissions resulting from operation of the proposed new facility or modification.

(10)[(11)] The [After June 30, 1979, the] owner or operator of a proposed new facility to be located anywhere within the state that is a major stationary source of emissions of any air contaminant (other than VOC [volatile organic compounds (VOC)]) for which a National Ambient Air Quality Standard has been issued, or is a facility that will undergo a major modification with respect to emissions of any air contaminant (other than VOC), must meet the following additional requirements if the ambient air quality impact of the source's emissions would exceed a de minimis impact level as defined in §101.1 [of this title (relating to Definitions)] in any area where the standard is exceeded or predicted to be exceeded.

(A) The proposed facility will comply with LAER [the lowest achiev-

able emissions rate (LAER)] as defined in §101.1 [of this title (relating to Definitions)].

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

(11)[(12)] The owner or operator of a proposed new facility in a designated nonattainment area for an air contaminant other than ozone, which will be a major stationary source or a major modification of an existing facility for that nonattainment [any] air contaminant [other than volatile organic compounds for which a national ambient standard has been issued] must meet the [following] additional requirements of subparagraphs of (A)-(D) of this paragraph regardless of the degree of impact of its emissions on ambient air quality. [if the facility is located in a designated nonattainment area:] Table I of §101.1 specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test must be applied to any proposed emissions increase in a nonattainment area. The de minimis thresholds are the same as the major modification levels stated in Table I, but aggregated over the prior five-year period including the calendar year of the proposed change. The past net increase must be evaluated even when the proposed increase by itself is below the major modification level.

(A) The proposed facility will comply with LAER [the lowest achievable emissions rate (LAER)] as defined in §101.1 [of this title (relating to definitions)] for the nonattaining pollutants.

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

(D) The proposed facility will use the offset ratio for the appropriate nonattainment classification as shown in Table I. For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a) (1)(A), the emissions offset ratio is the ratio of total actual reductions of pollutant emissions to total allowable emissions increases of such pollutants from the new source.

(12)[(13)] The proposed facility shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the EPA Environmental Protection Agency (EPA) in the CFR [Code of Federal Regulations] at 40 CFR 52.21 as amended October 17, 1988 and the Definitions for Protection of Visibility promulgated at 40 CFR 51.301, hereby incorporated by reference, except for the following paragraphs: 40 CFR 52.21(j),

concerning control technology review; 40 CFR 52.21(1), concerning air quality models; 40 CFR 52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application); 40 CFR 52.21(r) (2), concerning source obligation; 40 CFR 52.21(s), concerning environmental impact statements; 40 CFR 52.21(u), concerning delegation of authority; and 40 CFR 52.21(w), concerning permit rescission. The term "Executive Director" shall replace the word "Administrator," except in 40 CFR 52.21(b)(17), (f)(1)(v), (f) (3), (f)(4)(i), (g), and (t). "Administrator or Executive Director" shall replace "Administrator" in 40 CFR 52.21(b)(3)(iii), and Administrator and Executive Director" shall replace Administrator" in 40 CFR 52.21(p)(2). All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, as amended, or models and modeling procedures currently approved by EPA for use in the state program, and other specific provisions made in the state PSD State Implementation Plan. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the Administrator of the EPA. Copies of 40 CFR 52.21 and 40 CFR 51.301 are available upon request from the Texas Air Control Board, 12124 Park 35 Circle [6330 U. S. Highway 290 East], Austin, Texas 78753 [78723].

(13)[(14)] In evaluating air quality impacts under paragraphs (10)[(11)] or (12) [(13)] of this subsection, the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in the CFR [Code of Federal Regulations]. The relevant federal regulations are incorporated herein by reference, as follows: 40 CFR 51.100(hh)-(kk) promulgated November 7, 1986; the definitions of "owner or operator," "emission limitation and emission standards," "stack," "a stack in existence," and "reconstruction," as given under Sections 40 CFR 51.100(f), (z), (ff), (gg), and 40 CFR 60, respectively; 40 CFR 51.118(a), (b), and (c); and 40 CFR 51.164. Copies of these sections of the CFR [Code of Federal Regulations] are available upon request from the Texas Air Control Board, 12124 Park 35 Circle [6330 U. S. Highway 290 East], Austin, Texas 78753 [78723].

(14)(15) Permits for hazardous waste management facilities shall not be issued if the facility is to be located in the vicinity of specified public access areas under the following circumstances.

(A)-(F) (No change.)

(b) (No change.)

(c) Emission reductions: offset. At the time of application for a construction permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the facility for which the permit is sought provided that the following conditions are met:

(1) The emission reductions are not required by any provision of the Texas SIP as promulgated by the EPA [Administrator of the U. S. Environmental Protection Agency] in 40 CFR [C.F.R.], Part 52, Subpart SS, nor by any other federal regulation under the FCAA [Federal Clean Air Act], as amended, such as new source performance standards. **Minimum offset ratios as specified in Table I of §101.1 will be used in areas designated as nonattainment areas.**

(2) (No change.)

(d)-(f) (No change.)

§116.4. Special Conditions. Permits to construct and operate, special permits, and exemptions may contain general and special conditions. The holders of exemptions, construction and operating permits, and special permits shall comply with any and all such conditions [or satisfy the conditions for a standard exemption as published by the Executive Director]. A permit may contain condition(s) that preclude future use of standard exemptions at any existing or proposed facilities under the same TACB Account Number.

§116.6. Exempted Facilities.

(a) Pursuant to the Texas Clean Air Act (TCAA), §382.057, the facilities or types of facilities listed in the Standard Exemption List, dated January 17, 1992 [August 11, 1989], as filed in the Secretary of State's Office and herein adopted by reference, are exempt from the permit requirements of the TCAA, §382.0518 [§382.051 and §382.054], because such facilities will not make a significant contribution of air contaminants to the atmosphere; provided, however, that:

(1) **total actual [Actual] emissions authorized under standard exemption from the proposed facility shall not exceed 250 tons per year of carbon monox-**

ide or nitrogen oxides, or 25 tons per year of volatile organic compounds (VOC) or sulfur oxides or inhalable particulate matter, or 25 tons per year of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(2) [in addition, total] **total actual emissions authorized under standard exemptions from the property where the proposed facility is to be located shall not exceed 250 tons per year of carbon monoxide or nitrogen oxides, or 25 tons per year of VOC or sulfur oxides or inhalable particulate matter, or 25 tons per year of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen, unless at least one facility at such property has been subject to public notification and comment as required by §116.10 of this title (relating to Public Notification and Comment Procedure);**

(3)(2) construction or modification of the facility shall be commenced prior to the effective date of a revision of the Standard Exemption List under which the construction or modification would no longer be exempt;

(4)(3) the proposed facility shall comply with the applicable provisions of §[Section]111 and [or] §112, and [or] the new source review requirements of Part C and [or] Part D, of the Federal Clean Air Act (FCAA) and regulations promulgated thereunder;

(5) **there are no permits under the same Texas Air Control Board (TACB) Account Number that contain a condition or conditions precluding use of the standard exemption or standard exemptions.**

(b)(4) Notwithstanding the provisions of this section, any facility which constitutes a major source, or any modification which constitutes a major modification[,] under [any new source review requirement of] the FCAA [Federal Clean Air Act], as amended by the FCAA Amendments of 1990, and regulations promulgated there under shall be subject to the requirements of §116.3 of this title (relating to Consideration for Granting Permits to Construct and Operate) rather than this section;

(c)(5) No person shall circumvent by artificial limitations the requirements of §116.1 of this title (relating to [chapter, concerning] Permit Requirements).

(d)(b) The emissions from the facility shall comply with all rules and regulations of the TACB [Texas Air Control Board (TACB)] and with the intent of the TCAA, including protection of health and property of the public and all emissions control equipment shall be maintained in

good condition and operated properly during operation of the facility.

(e)(c) Copies of the current Standard Exemption List are available from the TACB office at 12124 Park 35 Circle [6330 U. S. Highway 290 East], Austin, Texas 78753 [78723], and at all TACB regional offices.

§116.11. Permit Fees.

(a) (No change.)

(b) Determination of fees.

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

(4) A fee of \$75,000 [\$50,000] shall be required if no estimate of capital project cost is included with a permit application.

(c)-(f) (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 January 17, 1992.

TRD-9200960

Lane Hartssock
Air Quality Planning
Texas Air Control Board

Proposed possible date of adoption: May 15, 1992

For further information, please call: (512) 908-1451

◆ ◆ ◆
**Part X. Texas Water
Development Board
Chapter 355. Research and
Planning Fund
Subchapter B. Economically
Distressed Areas Facility
Engineering**

◆ ◆ ◆
• 31 TAC §§355.70-355.73

The Texas Water Development Board (the board) proposes amendments to §§355.70-355.73, the repeal of §§355.74-355.77, and the adoption of new §§355.74-355.76, concerning funding for economically distressed areas facility engineering under the research and planning fund.

The amendment to §355.70, replacing the term "facility engineering" with "facility planning," allows the board to clarify its intent to require a single application for plans and specifications and project construction.

The amendment to §355.71 allows the board to finance up to 100% of the cost of facility planning for water and wastewater facilities to serve economically distressed areas. Sections 355.71, 355.72, and 355.73 are amended in order to remain consistent with the amendment to §355.70.

New §355.74 eliminates separate applications for plans and specifications and for project construction. Facility plan tasks and

construction plans and specifications will be included in one application.

The repeal of old §355.74 necessitates the repeal of old §§355.75-355.77 which will be renumbered as new §§355.74-355.76. New §§355.74-355.76 will also reflect changes due to the amendment made in §355.70.

The proposals are made in order to allow the board to continue the efficient implementation of the Economically Distressed Areas Program which provides financial assistance to those eligible counties which contain residential areas without any or with seriously inadequate water supply and sewer services creating serious and unacceptable health hazards and threatening the public health, safety, and welfare.

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

Ms. Morgan 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 simplification of the application procedure for the board's financial assistance programs and a resulting increase in the number of projects financed by the board funding. 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.

The agency has determined there will be no possible impact on local economies.

A public hearing on the sections will be held on February 28, 1992, at 9 a.m. in Room 117, Sam Houston Building, 201 East Texas Water Development Board Research and Planning Building, 14th Street, Austin, Texas 78701. Written comments may be sent to Todd Chenoweth, Project Director, Economically Distressed Areas, P.O. Box 13231, Austin, Texas 78711, and must be received by March 2, 1992.

The amendments are proposed under the Texas Water Code, §6.101 and the Texas Water Code, Chapter 15, Subchapter F, §15.403, which requires the board to adopt rules necessary to carry out the powers and duties of the board and of various programs of the research and planning fund.

§355.70. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 or 17, and not defined here shall have the meaning provided by the appropriate chapter.

Facility planning [engineering]—The studies and tasks that are performed to determine the engineering feasibility of water or wastewater facilities and to obtain plans and specifications for constructing the water or wastewater facilities for an economically distressed area. **Facility planning [engineer-**

ing] consists of a facility plan task and a plans and specifications task.

§355.71. Purpose and Policy.

(a) **Availability.** The board will make funds available through the research and planning fund or development fund to political subdivisions in affected counties for up to 100 [75]% of the cost of **facility planning [engineering]** for water and wastewater facilities to serve economically distressed areas. [At least 50% of the applicant's minimum required matching share shall be provided in the form of cash.] **The board will routinely fund up to 75% of the cost of facility planning, with at least 50% of the applicant's share to be provided in the form of cash. However, in hardship cases where the applicant does not have sufficient funds on hand to fund its share of a project in a designated area, the board may fund up to 100% of the cost of facility planning.**

(b) **Completion of phases.** The board will consider and may provide financing for plans and specifications only after completion of a facility plan or preparation of an equivalent product, and in conjunction with board approval of an application for financial assistance to construct water or wastewater facilities or both.

(c) **Repayment of costs for plans and specifications.** Upon closing a transaction that provides financial assistance for facility construction, the applicant may be required to return to the board, from any source available to the applicant including financial assistance from the board, that portion of costs for plans and specifications provided by the board. The board will determine the method and form of security for the funds advanced to the applicant for costs for plans and specifications.]

(b)[(d)] **Engineering.** To make the most effective use of the limited amount of funds available, the applicant will confer with the board on all significant decisions related to **facility planning [engineering]**.

(c)[(e)] **Professional engineer.** All applicable **facility planning [engineering]** reports and plans shall be signed and sealed by a professional engineer in accordance with the Texas Engineering Practice Act, Texas Civil Statutes, Article 3271a.

§355.72. Criteria for Eligibility. Political subdivisions must meet the appropriate requirements of this section before the board may provide financial assistance for **facility planning [engineering]**.

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

(3) A political subdivision applying for **facility planning [engineering]** assistance must have any required certificate of public convenience and necessity that includes the project area and that is for

the same type of service to be addressed in the proposed **facility planning [engineering]** study; or if the project area does not have a holder of a certificate of public convenience and necessity and one is required, the applicant must have applied for the certificate of public convenience and necessity before the applicant applies for **facility plan assistance**; or the application must be a joint application with the holder of the certificate of public convenience and necessity.

(4) (No change.)

(5) If, after submission of a **facility planning [engineering]** assistance application, the county average per capita income increases or the average unemployment rate decreases so that the county no longer meets the definition of affected county in §355.70 of this title (relating to Definitions), the political subdivision submitting the application will continue to be eligible for financial assistance provided the application is not substantially amended.

(6)-(7) (No change.)

§355.73. Scope of Facility Plan.

(a) A facility plan shall incorporate appropriate data from applicable existing planning reports and shall consist of:

(1)-(5) (No change.)

(6) documentation of the number of dwellings occupied on June 1, 1989, and number of dwellings to be served by the project within the **facility planning [engineering]** area and the economically distressed area;

(7)-(14) (No change.)

(b) The facility plan assistance shall include the items of work described in this subsection if approved or required by the board:

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

(3) the preparation of applications for necessary state and federal wastewater permits. **Facility planning [engineering]** may not include activities associated with administrative or legal proceedings by regulatory agencies; and

(4) (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 January 24, 1992.

TRD-9201127

Gail Allan
Assistant General Counsel
Texas Water Development
Board

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-7981

◆ ◆ ◆
• 31 TAC §§355.74-355.77

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

The repeals are proposed under the Texas Water Code, §6.101 and the Texas Water Code, Chapter 15, Subchapter F, §15.403, which requires the board to adopt rules necessary to carry out the powers and duties of the board and of various programs of the research and planning fund.

§355.74. *Scope of Plans and Specification Tasks.*

§355.75. *Submission of Applications.*

§355.76. *Contracts.*

§355.77. *Reports and Documents.*

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 January 24, 1992.

TRD-9201130 Gail Allan
Assistant General Counsel
Texas Water Development
Board

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-7981

◆ ◆ ◆
• 31 TAC §§355.74-355.76

The new sections are proposed under the Texas Water Code, §6.101 and the Texas Water Code, Chapter 15, Subchapter F, §15.403, which requires the board to adopt rules necessary to carry out the powers and duties of the board and of various programs of the research and planning fund.

§355.74. *Submission of Applications.* An application shall be submitted for the facility plan tasks. An application will be in the form and in numbers prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete applications.

§355.75. *Contracts.*

(a) If an application is approved, the board may authorize the executive ad-

ministrators to enter into a contract with the applicant on behalf of the board. The contract shall include: scope of work; schedule of work; budget; any other terms or conditions required by the executive administrator.

(b) An approved applicant may subcontract any or all of the scope of work. The board will not be party to any subcontract, and the political subdivision will be solely responsible for monitoring, administering, and requiring subcontractor compliance with the terms of the board's contract with the political subdivision.

(c) Applicants, contractors, and subcontractors shall maintain financial accounts, documents, and records that are acceptable to the board. All records shall be made available for examination and audit by the staff of the board and the state. Accounting by applicants, contractors, and subcontractors shall be in a manner consistent with generally accepted accounting procedures. All records will be retained for a minimum period of three years, and records shall be retained beyond the three years if litigation, a claim, or an audit is in process or if audit findings are not resolved. The three-year period will begin upon final payment of the funds retained by the board.

(d) Capital equipment shall not be purchased with facility planning assistance.

§355.76. *Reports and Documents.* All reports, planning documents, plans and specifications, and any other work products resulting from facility planning assistance must be provided to the board and will be deemed public information. The applicant and subcontractors shall be available for presentations of results as required by the board.

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

Issued in Austin, Texas, on January 24, 1992.

TRD-9201128 Gail Allan
Assistant General Counsel
Texas Water Development
Board

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-7981

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Chapter 363. Rules Relating to
Financial Programs

Subchapter E. Economically
Distressed Areas

• 31 TAC §363.508

The Texas Water Development Board (the board) proposes an amendment to §363.508,

concerning rules relating to financial programs.

The proposal is made in order to allow the board to continue the efficient implementation of the Economically Distressed Areas Program which provides financial assistance to those eligible counties which contain residential areas without any or with seriously inadequate water supply and sewer services creating serious and unacceptable health hazards and threatening the public health, safety, and welfare.

Susan Morgan, director of finance, 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. Morgan 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 simplification of the application procedure for the board's financial assistance programs and a resulting increase in the number of projects financed by the board funding. 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.

The agency has determined there will be no possible impact on local economies.

A public hearing on the section will be held on February 28, 1992, at 9 a.m. in Room 117, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701. Written comments may be sent to Todd Chenoweth, Project Director, Economically Distressed Areas, P.O. Box 13231, Austin, Texas 78711, and must be received by March 2, 1992.

The amendment is proposed under the Texas Water Code, §6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§363.508. *Facility Engineering Requirements.* The application shall include all of the facility engineering data, studies, and analysis described in §355.73(a) [§355.76(a)] of this title (relating to Scope of Facility Plan [Engineering Phases]), and the relevant data and information described in §355.73(b) [§355.76(b)].

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 January 24, 1992.

TRD-9201129 Gail Allan
Assistant General Counsel
Texas Water Development
Board

Earliest possible date of adoption: March 2, 1992

For further information, please call: (512) 463-7981

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 27. Intermediate Care Facility for the Mentally Retarded (ICF-MR)

Subchapter G. Additional Facility Responsibilities

• 40 TAC §27.701

The Texas Department of Human Services (DHS) proposes an amendment to §27.701, concerning agreements with local school districts, in its Intermediate Care Facilities for the Mentally Retarded rule chapter. Senate Bill 417, passed by the 71st Texas Legislature, requires DHS and the Texas Education Agency (TEA) to develop a memorandum of understanding concerning educational space and education-related services for school-age residents of intermediate care facilities for the mentally retarded (ICFs-MR). DHS is proposing the amendment to cite the memorandum of understanding which DHS and TEA developed to clarify the responsibilities of the ICFs-MR and the school districts. The responsibilities include providing space for educational activities, treatment and education-related services, and coordination of services between the ICFs-MR and school districts. The memorandum of understanding also delineates the respective responsibilities of TEA and DHS for assisting in the resolution of problems between school districts and ICFs-MR.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that children with mental retardation are educated in the least restrictive environment that ensures effective expenditure of state funds. 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.

Questions about the content of the proposal may be directed to Marc Gold at (512) 450-3174 in DHS's Institutional Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-017, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§27.701. Agreements with Local School Districts.

(a) As a condition of contracting to participate in the Title XIX Texas Medical Assistance Program, a facility that serves individuals between the ages of three and 21, inclusively, must meet the following requirements.

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

(3) **The facility must abide by the memorandum of understanding relating to school-age residents of intermediate care facilities for the mentally retarded as published by the Texas Education Agency under 19 Texas Administrative Code §89.243.**

(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 January 23, 1992.

TRD-9201119

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: April 1, 1992

For further information, please call: (512) 450-3765

Chapter 49. Child Protective Services

Subchapter A. Administration

• 40 TAC §49.105

The Texas Department of Human Services proposes an amendment to §49.105, concerning criminal record checks, in its Child Protective Services (CPS) chapter. The amendment extends eligibility for requesting criminal history checks to every volunteer organization authorized to request these checks under state law. State law currently authorizes the Court-Appointed Special Advocates (CASA) Program and Texas chapters of the Big Brothers/Big Sisters Program to request CPS criminal history checks. The purpose of the amendment is to allow the department to implement the law without having to amend §49.105 whenever the legislature authorizes additional volunteer organizations to request criminal history checks.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that prospec-

ive volunteers will be screened for previous histories of criminal child abuse or neglect before they begin working with volunteer organizations that serve abused and neglected children, as specified under state law. There will be no effect on small businesses as a result of enforcing or administering the section. There is no anticipated economic cost to people who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Ray Worsham at (512) 450-3362 in the Protective Services for Families and Children Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-376, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 41, which authorizes the department to enforce laws for the protection of children. The amendment is also proposed under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

§49.105. Criminal Records Checks for Authorized Volunteer Organizations [Big Brothers/Big Sisters Volunteers].

(a) To obtain information about the possible criminal history of a person who has applied to serve as a volunteer, volunteer organizations authorized by law to obtain such information through the Texas Department of Human Services (DHS) must give DHS identifying information about the applicant on a form designated by DHS for this purpose. DHS provides the information directly to the volunteer chapter or affiliate that requests it.

(b) Criminal history information obtained by DHS is privileged information reserved for the exclusive use of DHS staff and appropriate staff of volunteer organizations that are authorized to receive it under state law. [To obtain criminal history information through DHS, Big Brothers/Big Sisters chapters in Texas must submit identifying information on persons applying as volunteers on forms designated for this purpose. DHS returns all information directly to the local affiliates. Criminal history information obtained by DHS is privileged information for the exclusive use by DHS staff and people authorized to receive the records.]

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 January 23, 1992.

Proposed date of adoption: April 1, 1992

For further information, please call: (512)
450-3765

Subchapter U. Services to Truants and Runaways Program

• 40 TAC §§49.2101-49.2111

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

The Texas Department of Human Services proposes to repeal Subchapter U, §§49.2101-49.2111, concerning services to truants and runaways, and propose new Subchapter U, §§49.2101-49.2110, concerning services to runaways and at-risk youth, in its Child Protective Services (CPS) chapter. The purpose of the repeals and new sections is to improve CPS's program of contracting for short-term counseling and residential services to runaways and at-risk youth and their families.

The new sections emphasize the program's focus on the short-term nature of the services provided and the importance of serving the entire family whenever possible. Existing program requirements have also been rewritten and reorganized. The new sections now cover the following major topics: basic program description, clients, contractors, non-residential services, emergency residential care, services to abandoned youth, interagency local coordination, and financial requirements.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the proposed repeals and new sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections and repeals are in effect the public benefit anticipated as a result of enforcing them will be that youth and their families will be helped in resolving crises that threaten their capacity to live together. The proposal will also help youth and families develop skills to cope with problems and stresses in their homes and help parents resume their parental responsibilities and continue to meet them on an ongoing basis. Lastly, the proposal will provide short-term residential care for youth whose immediate return to the home is not advisable. There will be no effect on small businesses as a result of enforcing or administering the repeals and new sections. There is no anticipated economic cost to persons who are required to comply with the proposed new sections and repeals.

Questions about the content of this proposal may be directed to Thomas Chapmond at

(512) 450-3309 in the Protective Services for Families and Children Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-357, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, including a program of services for children who have been truant or who have run away from home, children who are at risk of running away from home or at risk of abuse or neglect, and the families of all these children. The repeals are also proposed under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to accept reports of children who have been truant or who have run away from home.

§49.2101. Definitions.

§49.2102. Contractors.

§49.2103. Client Eligibility.

§49.2104. Minimum Required Services.

§49.2105. Minimum Standards for Case-work/Counseling.

§49.2106. Minimum Standards for Emergency Residential Care.

§49.2107. Coordination with Child Protective Services.

§49.2108. Services to Abandoned Children.

§49.2109. Juvenile Probation.

§49.2110. Certified Local Resources Requirements.

§49.2111. Funding Requirements.

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 January 24, 1992.

TRD-9201161 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: April 15, 1992

For further information, please call: (512)
450-3765

Subchapter U. Services to Runaways and At-Risk Youth

• 40 TAC §§49.2101-49.2110

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, including a program of services for children who have been truant or who have run away from home, children who are at risk of running away from home or at risk of abuse or neglect, and the families of all these children. The repeals are also proposed under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to accept reports of children who have been truant or who have run away from home.

§49.2101. Program Description.

(a) Under the Services to Runaways and At-Risk Youth Program, the Texas Department of Human Services (DHS) contracts for short-term counseling and residential services to runaway youth, to youth at risk of running away, to truants, to youth at risk of abuse or neglect, and to their families. The purposes of these services are:

- (1) to prevent running away from home and truancy;
- (2) to reunite runaway youth with their families, and remedy the causes of their running away; and
- (3) to reduce the risk of abuse and neglect that may lead to running away or truancy.

(b) The Services to Runaways and At-Risk Youth program gives priority to strengthening the family. Whenever possible, contractors must provide services to youth and their families while the youth remain in their homes.

§49.2102. Clients.

(a) Eligibility. Youth between the ages of 10 and 17 inclusively, and their families, are eligible to receive services if the youth fit any of the following eligibility categories.

- (1) Runaway youth. A youth who has left home or who has no identifiable residence. A youth whose parents or caretakers have told him to leave or consented to his departure is considered a runaway.
- (2) Youth at risk of running away. A youth who appears likely to run away from home.
- (3) Truant. A youth who has been voluntarily absent from school for reasons that the school does not accept.

(4) Youth at risk of abuse or neglect. A youth referred by the Texas Department of Human Services' (DHS's) Protective Services for Families and Children (PSFC) Department to reduce the risk of abuse or neglect. PSFC may make such a referral only after completing an investigation of child abuse or neglect and deciding not to directly provide continuing services. Accordingly, a youth with an open protective services case is not eligible under this heading.

(b) Exception. Youth who are currently on probation for delinquent conduct, on parole, or in the custody of the Texas Youth Commission are not eligible for services.

(c) Documenting eligibility. The contractor must determine each youth's category of eligibility as designated in subsection (a) of this section, specify it in the youth's case record, and include documentation in the case record to support the eligibility determination.

(d) Changes in eligibility. When there are changes in the basis of a client's eligibility that affect the services the client may receive, the contractor must document the changes in the case record.

(e) Equal access. Contractors must give all eligible clients equal access to services whether the clients have requested services directly or been referred. If referrals begin to exceed a contractor's service capacity, the contractor must establish priorities or develop other methods to address the overload. The contract manager must approve the contractor's methods of addressing this overload.

§49.2103. Contractors

(a) Types of contractors. The Protective Services for Families and Children (PSFC) Department has the authority to contract with any of the following types of providers to provide services to runaways and at-risk youth:

- (1) private nonprofit agencies;
- (2) public agencies including but not limited to county governments, local offices of the Texas Department of Mental Health and Mental Retardation, and school districts;
- (3) private for-profit agencies; and
- (4) individuals.

(b) Compliance with applicable requirements. Contractors for services to runaways and at-risk youth must comply with all applicable requirements of Chapter 69 of this title (relating to Contracted Services) and the requirements of this subchapter.

(c) Restriction on county governments. County governments that contract to

provide services to runaways and at-risk youth must not include these services in their juvenile probation or juvenile justice activities. Contracting counties must ensure that the following conditions are satisfied.

(1) Staff providing services must not be on duty as, or serving in the capacity of, juvenile probation officers. They also must not be performing functions unique to juvenile probation. If staff providing services are employed by a juvenile probation department, they must make every effort to ensure that clients are aware that they are:

(A) not juvenile probation officers; and

(B) not functioning in a juvenile probation capacity.

(2) County staff providing services must provide them in facilities that are separate and distinct from juvenile probation offices and juvenile detention facilities. If county staff provide services to runaways and at-risk youth in a facility that is adjacent to a juvenile probation or detention facility, the two facilities must:

- (A) be separate;
- (B) have separate entrances; and
- (C) be clearly distinguished.

(d) Scope of the restriction. The restriction specified in subsection (c) of this section does not prohibit a contracting county's juvenile probation department from administering contract services to runaways and at-risk youth.

(e) Service area. Each contractor must serve a primary county. A contractor may also receive funding to provide services in as many as four outlying counties. In each outlying county served under the contract, the contractor must:

- (1) have a clearly identified office;
- (2) provide a staff person at least part time; and
- (3) be able to provide crisis-intervention services within 24 hours of any request.

§49.2104. Nonresidential Services.

(a) Duration of nonresidential services. Each eligible youth and family may receive nonresidential services for as many as 90 days in any 12-month period. If a youth and family still need services after receiving a cumulative total of 90 days of

service in a 12-month period, the administrator of the contractor's Services to Runaways and At-Risk Youth program may approve as many as 90 additional days of service. The administrator must document the reason for the extension in the case record. No youth or family may receive more than 180 days of nonresidential service funded through this program in any 12-month period.

(b) Types of nonresidential service.

(1) Each contractor must directly provide the following types of service:

(A) outreach. Promotion of available services to encourage eligible youth and families to use them;

(B) reception and screening. Initial review of prospective new clients, determination of their eligibility, and referral of ineligible youth and families to appropriate alternative services. Reception and screening services must be available 24 hours a day every day of the year;

(C) assessment. Consideration of the needs of eligible clients and development of service recommendations;

(D) case planning. Development and revision of specific service plans for eligible youth and families;

(E) crisis intervention. Actions taken to resolve the immediate crisis that prompted the request for services. Crisis intervention services may be provided individually or to the family as a whole. Whenever possible, the resolution of the immediate crisis should allow the youth to remain in the home while receiving counseling.

(2) Each contractor must also either directly provide or arrange for the following types of service;

(A) counseling. Communication and emotional support in a personal or group setting to help the youth and family resolve the problems that led to the request for services. Counseling may be provided individually or to the family as a whole.

(B) skills-based training for parents and youth. Structured training sessions to improve skills in communication, problem solving, decision making, and conflict resolution. Skills-based training must be provided to the parents and to the youth in separate sessions. Training sessions must be clearly distinguished from counseling sessions, particularly when the same person provides both.

§49.2105. Nonresidential Service Requirements.

(a) Crisis intervention.

(1) The contractor must ensure that individual and family crisis-intervention services are available 24 hours a day every day of the year.

(2) Contractors must encourage clients to accept crisis-intervention counseling on a family basis rather than on an individual basis, unless distances or severe hostilities preclude counseling with the family. If the family does not participate in crisis counseling, the contractor must document the reasons for nonparticipation in the youth's case record.

(b) Counseling.

(1) Contractors must provide or arrange for counseling services on an individual or a family basis whenever possible. If the parents do not participate in counseling, or if the youth does not participate, the contractor must document the reasons for nonparticipation in the youth's case record.

(2) Each counselor providing this service must have a Bachelor's degree and at least one year of experience in working with youth or families. An additional year of experience in working with youth or families may be substituted for each year of college short of the four years normally required to secure a Bachelor's degree.

(3) When a youth returns to a family that lives too far away for the contractor to provide counseling services directly, the contractor must make reasonable efforts to refer the youth and family to counseling services in the community to which the youth has returned. The contractor must document these efforts in the youth's case record.

(4) The primary goal of counseling services is to enable the youth to remain in or return to the family. When this is not possible, the contractor must include an explanation and a statement of alternative goals in the case record.

(c) Face-to-face contact. The primary caseworker or counselor must have face-to-face contact at least twice a month with each youth or family receiving services.

(d) Case planning.

(1) The contractor must begin developing the initial service plan within three workdays after the initial intervention, and must complete it within 10 workdays. At a minimum, the plan must include the following elements:

(A) the services to be provided;

(B) the name of the person or agency providing each service;

(C) the time frame for each service;

(D) the anticipated outcomes; and

(E) the youth's and parents' signatures or an explanation of their failure to sign.

(2) The contractor must review and update the service plan every 30 days. The contractor must involve the youth and attempt to involve the family in each service-plan review.

(e) Case closure. The contractor must complete a case-closure summary at the conclusion of each youth's services and include it in the youth's case record. The summary must specify

(1) the reasons for closing the case;

(2) the services that were provided;

(3) the actual outcomes; and

(4) all referrals for additional services from other sources.

(f) Follow-up survey.

(1) To assess the effectiveness of services, the contractor must conduct a follow-up survey of each youth or family whose case has been closed. The survey must include all questions specified by the Protective Services for Families and Children (PSFC) Department.

(2) The survey must take place two to three months after the conclusion of services. It may be conducted in person, by telephone, or by mail.

(3) The contractor must document the results of the survey in the case record. If the youth and family cannot be reached, the contractor must document the attempts made to contact them in the case record.

(4) The contractor must report the results of follow-up surveys to PSFC in its monthly summaries of statistics.

§49.2106. Emergency Residential Care.

(a) General description. In addition to providing nonresidential services, each contractor must directly provide or arrange for emergency residential care. Throughout this subchapter, the phrase "emergency residential care" refers to the short-term placement of a runaway or at-risk youth in a

licensed, 24-hour, child care facility or a licensed foster home. Only runaway youth and youth at-risk of running away qualify for emergency residential care. Truants and youth at risk of abuse or neglect do not qualify.

(b) Efforts to reunite the family.

(1) Before a contractor provides or arranges for emergency residential care, the contractor must make reasonable efforts to reunite the family. If these efforts are unsuccessful, the contractor may provide emergency residential care. However, the youth's placement in care must be as brief as possible; and the contractor must continue trying to reunite the family throughout the placement. The contractor must document its efforts to reunite the family in the case record.

(2) If the contractor's efforts to return a youth home are unsuccessful, the contractor must document in the case record the plans for an alternative placement when the youth leaves emergency residential care. The alternative placement may be arranged either by the contractor or by the person or agency responsible for the youth.

(c) Family counseling. When a youth is in emergency residential care, the contractor must make reasonable efforts to provide or arrange for counseling for the youth's family. The contractor must document these efforts in the youth's case record.

(d) Service area. Each contractor must be capable of providing emergency residential care in the geographic area that the contractor serves. Contractors may arrange for emergency residential care outside this area only when:

(1) a youth must be placed outside the area in order to be near his family, or

(2) the contractor temporarily needs a second facility to back up its primary facility.

(e) Duration of emergency residential care. Each runaway or at-risk youth who is eligible for emergency residential care as specified in subsection (a) of this section may receive as many as 30 consecutive days of this care. When a youth still needs emergency residential care after receiving 30 consecutive days of service, the contractor's program administrator may approve as many as 30 additional days if the contractor can document that, before the additional 30-day period ends, the youth will either return home or receive an alternative placement. During any 12-month period, no youth may receive a cumulative total of more than 60 days of emergency residential care under this program. And no contractor that provides emergency residential care to more than 15 youth per year

may approve extensions for more than 25% of the youth who receive emergency residential care from the contractor during the fiscal year.

§49.2107. Service Requirements for Emergency Residential Care. All contractors must meet the following requirements for emergency residential care.

(1) Availability. Emergency residential care must be available 24 hours a day every day of the year.

(2) Facility.

(A) Emergency residential care must be provided in licensed, 24-hour, child care facilities that are in compliance with all applicable licensing requirements. Foster homes certified by licensed child-placing agencies meet this requirement.

(B) No facility providing emergency residential care under this program may have more than 24 beds. However, contractors that had more than 24 beds under the Services to Truants and Runaways program in fiscal year 1984 have until September 1, 1992, to comply with this requirement.

(C) No contractor may use a juvenile detention center or any other locked facility to provide emergency residential care under this program.

(3) Frequency of contact. When a contractor subcontracts for emergency residential care, the contractor must:

(A) have face-to-face contact with each youth admitted to care before the admission takes place; and

(B) contact each youth in care at least three times a week, with at least one of these contacts being a face-to-face contact by the primary caseworker. The contractor must document the reasons for any failure to make these contacts in the case record.

(4) Notifications. The contractor must notify a youth's parents or managing conservator within 24 hours of the youth's admission to emergency residential care. If the parents or managing conservator cannot be contacted, the contractor must notify a law enforcement agency of the youth's presence as specified in the Texas Penal Code, §25.07.

(5) Service plan.

(A) Within three days of a youth's admission to emergency residential care, the contractor must develop a service

plan and file it in the youth's case record. The contractor must give the parents or managing conservator, the youth, and the referring agency (if any) an opportunity to make suggestions for the service plan. The contractor must also give the parents or the managing conservator a copy of the plan.

(B) At a minimum, the service plan must include the following elements:

(i) an assessment of the youth's immediate needs;

(ii) a description of the efforts made to keep the family together, or to return the youth to the home, rather than placing the youth in emergency residential care;

(iii) the expected length of stay;

(iv) the youth's understanding of and feelings about the placement;

(v) the services to be provided;

(vi) the name of the person or agency providing each service;

(vii) the time frame for each service;

(viii) the anticipated outcomes; and

(ix) the signatures of the youth and of the parents or the managing conservator, or an explanation of their failure to sign.

(C) The contractor must informally review the service plan every week and note the youth's progress toward the plan's stated goals. The contractor must formally review and update the service plan when a youth remains in emergency residential care for more than 30 consecutive days. The parents or managing conservator, the youth, and the referring agency (if any) must have an opportunity to participate in the review; and the contractor must give the parents or the managing conservator a copy of the updated plan.

(6) Discharge. The contractor must complete a discharge summary on the day of the youth's discharge from emergency residential care, and keep it in the youth's case record. The summary must specify:

(A) the date of discharge;

(B) the reasons for discharging the youth from emergency residential care;

(C) the name and address of the person into whose care the youth is discharged, and that person's relationship to the youth; and

(D) the follow-up services the youth is to receive after discharge, and the providers that will deliver them.

(7) Follow-up survey. The contractor must conduct a follow-up survey of each youth or family whose case has been closed. The survey must conform to the requirements specified in §49.2105(f) of this title (relating to Nonresidential Service Requirements).

§49.2108. Services to Abandoned Youth.

(a) Throughout this subchapter, the term "abandoned youth" refers to any youth:

(1) whose parents or managing conservator cannot be located; or

(2) whose parent or managing conservator has neither permitted the youth to return home nor arranged for the youth's care, after the youth has been absent from the home for any reason, including having run away, as specified in the Texas Family Code, §34.012(2)(C).

(b) Contractors must make reasonable efforts to reunite the family of an abandoned youth who qualifies for services.

(1) Parents' whereabouts unknown. If the whereabouts of a youth's parents are unknown, the contractor must diligently try to locate the parents within 24 hours of initiating services. The contractor must immediately notify the Child Protective Services (CPS) program if the parents cannot be located within 24 hours. After notifying CPS, the contractor must keep trying to locate the parents, document all efforts to locate them in the youth's case record, and work with CPS staff to determine what responsibility CPS will assume for the youth's care and placement if the parents are not located.

(2) Parents' refusal to accept responsibility. If a youth's parent or managing conservator has refused to permit the youth to return home and refused to make other arrangements for the youth's care, the contractor must diligently try to resolve the problems that have caused the parent or conservator to refuse responsibility. If the contractor determines that the parent or conservator is likely to continue refusing responsibility despite the contractor's efforts, the contractor must report the parent's or conservator's refusal to CPS within 24 hours of making the determination. After notifying CPS, the contractor must keep trying to engage the parent or conservator in services with the goal of eventually re-

turning the youth home. The contractor must document its efforts to engage the parent or conservator in services in the youth's case record, and work with CPS staff to determine what responsibility CPS will assume for the youth's care and placement if the efforts remain unsuccessful.

§49.2109. Interagency Coordination.

(a) Child Protective Services (CPS) program referrals to contractors.

(1) Local office agreement. Each contractor must establish a written agreement with the primary CPS office in

each county that the contractor serves. The agreement must:

(A) establish guidelines for determining when CPS should refer clients to the contractor for services to runaways and at-risk youth;

(B) outline procedures for making and receiving such referrals;

(C) assign responsibilities for providing services; and

(D) designate a CPS staff member as the local office's contact person for services to runaways and at-risk youth. If the contractor is a participant in the county's Memorandum of Understanding (MOU) on Services to Runaways, the contractor may substitute the MOU for the agreement required in this paragraph.

(2) Who can be referred. When referring a youth or a family to a contractor, CPS staff must ensure that the referral meets applicable eligibility requirements. These requirements vary according to the type of presenting problem and the CPS stage of service. The differing requirements are specified in the following chart:

Presenting Problem	Requirements
At Risk of Abuse or Neglect.	The youth must not have an open CPS case. Youth with this presenting problem may receive nonresidential services, but not residential services. Only CPS can make referrals for this presenting problem.
Runaway Youth, Youth At Risk of Running Away, and Truants.	Intake. The report received at intake must not be referred for investigation. Youth with open in-home cases. Youth with open in-home cases may receive both residential and nonresidential services. Youth in substitute care. Except as specified in subclause (11) of this clause, youth in substitute care may receive nonresidential services, but not residential services. The youth's foster parents or residential care staff must participate in the services. CPS staff must not refer youth who are in residential care facilities licensed to serve more than 12 children. DHS expects residential care facilities of that size to provide or arrange the needed services themselves.

(b) Juvenile probation department referrals to contractors. Each contractor must establish a written agreement with the juvenile probation department in each county that the contractor serves. The agreement must:

(1) establish guidelines for determining when the juvenile probation department should refer clients to the contractor;

(2) outline procedures for making and receiving such referrals;

(3) assign responsibilities for providing services; and

(4) designate a juvenile probation department staff member as the department's contact person for services to runaways and at-risk youth. If the contractor is a participant in the county's MOU on

Services to Runaways, the contractor may substitute the MOU for the agreement required in this subsection.

(c) Community collaboration. Each contractor must develop and maintain a local advisory council to support and guide the contractor's service planning and delivery. The contractor must make reasonable efforts to include major, local youth-serving agencies on the advisory council, and to consult with such agencies if they are not on the council. Examples of these agencies include schools, juvenile probation departments, CPS units, and local units of the Texas Department of Mental Health and Mental Retardation.

§49.2110. Financial Requirements.

(a) Maximum funding.

(1) The Texas Department of Human Services' (DHS's) funding for con-

tracted services must not exceed the following limits.

(A) A contractor whose primary county has a population of 500,000 or more may receive up to \$175,000 for serving that county.

(B) A contractor whose primary county has a population under 500,000 may receive up to \$150,000 for serving that county.

(C) A contractor may receive up to \$25,000 for each additional county served, up to the maximum of four additional counties specified in §49.2103(e) of this title (relating to Contractors).

(2) Contractors are not guaranteed funding at the maximum level. Actual

funding levels depend on regional allocations.

(b) Ten percent match. Each contractor must match DHS's funding with certified local resources equal to at least 10% of the funding received from DHS. The contractor's match must conform to all applicable requirements of §69.237 of this title (relating to Certified Local Resources); and to the following requirements.

(1) The certified local resources used to make the match may include:

(A) donated cash;

(B) depreciation on fixed equipment or buildings owned by the contractor;

(C) grant funds;

(D) fees for services collected from clients or other parties; and

(E) federal funds, when permitted under applicable federal laws.

(2) The match cannot include:

(A) donated goods and services; or

(B) capital expenditures.

(c) Fees for services.

(1) The contractor may charge fees for contracted services if:

(A) the contractor uses a sliding-fee schedule based on the client's or other party's ability to pay;

(B) DHS has approved the sliding-fee schedule; and

(C) the contractor keeps detailed documentation of the fees assessed, the grounds for assessing them, and the amounts collected.

(2) The contractor must not deny services because a client is unable or unwilling to pay the contractor's fees.

(3) When the contractor bills DHS for reimbursement under the contract, the contractor's fees for services to eligible clients are not considered in determining the cost of services.

(4) Within two months after the end of the contract year, the contractor must report to DHS the amounts and sources of all fees collected for services funded by the program. The contractor must reimburse DHS for all fees collected in excess of the required match.

(d) Documentation and billing. Each contractor must comply with all applicable DHS procedures and requirements for documenting and billing contracted services. DHS regional contract staff must explain these procedures and requirements to the contractor.

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 January 24, 1992.

TRD-9201162

Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Proposed date of adoption: April 15, 1992

For further information, please call: (512) 450-3765

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Withdrawn Sections

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

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 309. Operation of Racetracks

Subchapter C. Greyhound Racetracks

Operations

- 16 TAC §309.353

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amended §309.353, submitted by the Texas Racing Commission has been automatically withdrawn, effective January 21, 1992. The withdrawal as proposed appeared in the July 19, 1991, issue of the *Texas Register* (16 TexReg 3991).

TRD-9200886





Name: Brandilyn Farrell

Grade: 7

School: Clear Lake Intermediate, Clear Creek 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 19. EDUCATION Part II. Texas Education Agency

Chapter 53. Regional Education Service Centers

The Texas Education Agency adopts amendments to §§53.2, 53.3, and 53.21-53.25 concerning regional education service centers, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6356). The Texas Performance Review conducted by the Office of the Comptroller in the spring of 1991 and most recently, the Texas Education Agency Reorganization Advisory Committee Report, have recommended that the role of the education service centers be expanded and that the centers take on a greater responsibility for the delivery of technical assistance to schools. The studies also recommended that the commissioner of education provide greater direction in the operations and services of the center. The intent of the proposed amendment is to amend the recommendations of the studies.

Justification for the amendments will be the implementation of recommendations to expand the role of the regional education service centers to take on greater responsibility for the delivery of technical assistance to schools, and to provide the commissioner of education with greater direction in the operation of the centers.

The amendments will function by changing the procedure the centers follow in selecting executive directors; add an annual performance review of each executive director; and add an annual review of the operating budget for each center.

No comments were received regarding adoption of the amendments

Subchapter A. Authorization

• 19 TAC §53.2, §53.3

The amendments are adopted under the Texas Education Code, §11.32(a), which provides the State Board of Education with the authority to establish rule and regulations for the operation of regional education service center.

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 January 15, 1992.

TRD-9201027
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Administration and Operation

• 19 TAC §§53.21-53.25

The amendments are adopted under the Texas Education Code, §11.32(a), which provides the State Board of Education with the authority to establish rule and regulations for the operation of regional education service center.

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 January 15, 1992.

TRD-9201028
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Chapter 89. Adaptions for Special Populations

Subchapter G. Special Educa- tion

Clarification of Provisions in Federal Regulations and State Law

• 19 TAC §89.243

The Texas Education Agency (TEA) adopts repeal of §89.243 concerning adaptations for special populations, without changes to the proposed text as published in the August 16, 1991, issue of the *Texas Register* (16 TexReg 4446). The section is being repealed because Senate Bill 417, 71st Legislature, requires a new memorandum of understanding between the agency and the Texas De-

partment of Human Services concerning educational space and educationally related services for school-age residents of intermediate care facilities for the mentally retarded.

Justification for the repeal will be the implementation of legislation included in Senate Bill 417, 71st Legislature, regarding educational space and services for school-age residents in ICF-MR facilities.

The repeal will function by maximizing federal reimbursement for educational space provided by ICF's; clarifying responsibility for the provision of educational space, care/treatment, and educationally related services; and enhancing coordination to prevent the duplication of services.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code, §21.508, as amended by Senate Bill 417, 71st Legislature, which provides the Central Education Agency with the authority to develop a memorandum of understanding with the Texas Department of Human Services for the provision of classrooms and educationally related therapy for students residing in ICF-MR facilities.

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 January 15, 1992.

TRD-9201029
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

The Texas Education Agency (TEA) adopts new §89.243, concerning special education, the proposed text as published in the August 16, 1991, issue of the *Texas Register* (16 TexReg 4446). The new section implements the requirements of Senate Bill 417, 71st Legislature, for a memorandum of understanding between the agency and the Texas Department of Human Services concerning educational space and educationally related services for school-age residents of intermediate care facilities for the mentally retarded. The repeal of the previous memorandum of understanding was proposed in the August 16, 1991, issue of the *Texas Register* (16 TexReg 4446).

Justification for the new sections will be the implementation of legislation included in Senate Bill 415, 71st Legislature, regarding educational space and services for school-age residents in ICF-MR facilities.

The new section will function by maximizing federal reimbursement for educational space provided by ICF's; clarifying responsibilities for the provision of educational space, care/treatment, and educationally related services, and enhancing coordination to prevent the duplication of services

Comments were received regarding adoption of the new section from Advocacy, Inc. The comments recommended that certain relevant federal regulations and board rules cited within the proposed rule be restated within the text of the rule. The Administrative Procedure and Texas Register Act, §6(c), as well as rules adopted by the Office of the Secretary of State prevent repeating legislative statutes in board rules. However, copies of these regulations and rule will be distributed upon final adoption of the proposed rule to school districts and intermediate care facilities. Further, the agency and the Texas Department of Human Services plan to provide training to staff within the regional level of both agencies regarding implementation of the rule with attention to the application of the referenced regulations and rule.

The new section is adopted under the Texas Education Code, §21.508, as amended by Senate Bill 417, 71st Legislature, which provides the Central Education Agency with the authority to develop a memorandum of understanding with the Texas Department of Human Services for the provision of classrooms and educationally related therapy for students residing in ICF-MR facilities

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 January 15, 1992.

TRD-9201032 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter H. Other Provisions

• 19 TAC §89.301

The Texas Education Agency (TEA) adopts new §89.301 concerning adaptations for special populations, without changes to the proposed text as published in the August 26, 1991, issue of the *Texas Register* (16 TexReg 6844). The Code of Criminal Procedure, Article 42.18, §21, enacted by the 71st Legislature, requires the Texas Department of Criminal Justice Pardons and Parole Division and the Central Education Agency to develop and adopt by rule, a memorandum of

understanding that clearly identifies collaborative and individual responsibilities of each agency for the provision of educational services; ensure that the rules adopted by both agencies pursuant to the memorandum of understanding are in accordance with statutory mandate and the governing rules of each agency; and establishes procedures for ensuring that information affecting educational program activities and mandatory requirements by both agencies is shared between the agencies.

Justification for the new section will be in implementation of legislation enacted by the 71st Legislature, regarding a memorandum of understanding that clearly identifies collaborative and individual responsibilities of each agency for the provision of educational services to parolees.

The new section will function by identifying collaborative and individual responsibilities of each agency for the provision of educational services to parolees, and establishing procedures for ensuring that information affecting educational program activities and mandatory requirements by both agencies is shared between the agencies.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Code of Criminal Procedure, Article 42.18, §21, enacted by the 71st Legislature, which provides the Texas Department of Criminal Justice Pardons and Parole Division and the Central Education Agency with the authority to develop and adopt by rule, a memorandum of understanding that defines respective responsibilities in literacy of inmates released from prison on parole and mandatory supervision.

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 January 15, 1992.

TRD-9201031 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Chapter 105. Foundation School Program

The Texas Education Agency (TEA) adopts the repeal of §§105.11, 105.21-105.27, 105.49, 105.71, 105.72, 105.92, 105.171, 105.210, 105.252-105.255, 105.291, 105.292, 105.331, 105.391, 105.392, and 105.461-105.469 concerning tax collections without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6358). Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to consider all rules affected by this provision so that any

rules adopted on these matters must occur under the new rule-making relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 105 have been reviewed by the board and are being repealed. A new Chapter 105 is being adopted in a separate submission.

Justification for the repeals will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The repeals will function by establishing a clearer more concise statement of the agency's rule authority.

No comments were received regarding adoption of the repeals.

Subchapter A. Tax Collections

• 19 TAC §105.11

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201033 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Average Daily Attendance

• 19 TAC §§105.21-105.27

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201034 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Allocation of Funds for Windham Independent School District

• 19 TAC §105.49

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201035 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter D. School Year

• 19 TAC §105.71, 105.72

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201036 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter E. Salary Schedule

• 19 TAC §105.92

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter I. County Available School Funds

• 19 TAC §105.171

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201038 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter K. Distribution of Foundation School Fund

• 19 TAC §105.210

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201039 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter M. State Minimum Sick Leave

• 19 TAC §§105.252-105.255

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201040 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter O. State Allocations to Regional Education Service Centers

• 19 TAC §105.291, 105.292

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201041 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter Q. Adjustments of Payments

• 19 TAC §105.331

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201042
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter T. Requirements for Program Participation

• 19 TAC §105.391, §105.392

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201043
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter W. Price Differential Index

• 19 TAC §§105.461-105.469

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201044
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

The Texas Education Agency (TEA) adopts new §105.11 and §105.31 concerning definitions without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6361). Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rule-making relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 105 have been reviewed by the board and are being repealed in a separate submission.

Justification for the new sections will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The new sections will function by establishing a clearer more concise statement of the agency's rule authority.

No comments were received regarding adoption of the new sections.

Subchapter A. Definitions

• 19 TAC §105.11

The new section is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201004
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. School Year

• 19 TAC §105.31

The new section is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201005
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Chapter 109. Budgeting, Accounting, and Auditing

The Texas Education Agency adopts the repeal of §§109.1, 109.21-109.25, 109.41-109.44, and 109.61, concerning budgeting, accounting, and auditing, with changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6362).

Senate Bill, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 109 have been reviewed by the board and are being repealed. A new Chapter 109 is being adopted in a separate submission.

Justification for the repeals will be in compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The repeals will function by establishing a clearer, more concise statement of the agency's rule authority.

No comments were received regarding adoption of the repeals

Subchapter A. Budgeting, Accounting, Financial Reporting, and Auditing for School Districts

• 19 TAC §109.1

The repeal is adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201006
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Central Education Agency Audit Functions

• 19 TAC §§109.21-109.25

The repeals are adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201007 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Advisory Committee for Budgeting, Accounting, and Auditing

• 19 TAC §§109.41-109.44

The repeals are adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201008 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter D. Adoptions by Reference

• 19 TAC §109.61

The repeals are adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201009 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

The Texas Education Agency (TEA) adopts amendments to §§109.1, 109.21-109.24, 109.41-109.44, and 109.61, concerning budgeting, accounting, and auditing, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 *TexReg* 6365).

Senate Bill, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 109 have been reviewed by the board and are being repealed in a separate submission.

Justification for the new sections will be in compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The new sections will function by establishing a clearer, more concise statement of the agency's rule authority.

No comments were received regarding adoption of the new sections.

Subchapter A. Budgeting, Accounting, Financial Reporting, and Auditing for School Districts

• 19 TAC §109.1

The new section is adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201023 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Central Education Agency Audit Functions

• 19 TAC §§109.21-109.24

The new sections are adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992

TRD-9201024 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Advisory Committee for Budgeting, Accounting and Auditing

• 19 TAC §§109.41-109.44

The new sections are adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201025 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter D. Adoptions by Reference

• 19 TAC §109.61

The new section is adopted under the Texas Education Code, §2.25, passed by the 71st

Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992

TRD-9201026 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Chapter 113. Federal Funds to Support Public Education in Texas

The Texas Education Agency (TEA) adopts repeal of §§113.1, 113.21, and 113.41-113.45, concerning federal funds to support public education in Texas, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 *TexReg* 6364).

Senate Bill, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 109 have been reviewed by the board and are being repealed. A new Chapter 109 is being adopted in a separate submission.

Justification for the repeals will be in compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The repeals will function by establishing a clearer, more concise statement of the agency's rule authority.

No comments were received regarding adoption of the repeals

Subchapter A. Federal Funds for Local Education Agencies

• 19 TAC §113.1

The repeals are adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201013 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Federal Funds for the Texas Education Agency

• 19 TAC §113.21

The repeal is adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201014 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Complaint Procedures for Federal Programs

• 19 TAC §§113.41-113.45

The repeals are adopted under the Texas Education Code, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administration Code, relating to public 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 January 15, 1992.

TRD-9201015 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

The Texas Education Agency (TEA) adopts new §§113.1, 113.21, 113.22, 113.31, and 113.32, concerning federal funds to support public education in Texas, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 *TexReg* 6356).

Senate Bill, 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 113 have been reviewed by the board and are being repealed.

Justification for the new sections will be the compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The new section will function by establishing a clearer, more concise statement of the agency's rule authority.

No comments were received regarding adoption of the new sections.

Subchapter A. Federal Funds for Local Education Agencies

• 19 TAC §113.1

The new section is adopted under the Senate Bill, 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201010 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Complaint Procedures for Federal Programs

• 19 TAC §113.21, §113.22

The new sections are adopted under the Senate Bill, 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to

review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201011
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Hearings Procedures for Federal Programs

• 19 TAC §§113.31, §113.32

The new sections are adopted under the Senate Bill, 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201012
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Chapter 121. Public School Finance-Personnel

The Texas Education Agency (TEA) adopts the repeal of §§121.1, 121.11-121.16, and 121.31-121.35, concerning public school finance-personnel, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6366).

Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 121 have been reviewed by the board and are being repealed. A new Chapter 121 is being proposed in a separate submission.

Justification for the repeals will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provisions.

The repeals will function by establishing a clearer more concise statement of the agency's rule authority.

No comments were received regarding adoption of the repeals.

Subchapter A. General Provisions

• 19 TAC §121.1

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201020
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Personnel Records

• 19 TAC §§121.11-121.16

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201021
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Years of Service for Salary Increment Purposes

• 19 TAC §§121.31-121.35

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201022
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

The Texas Education Agency (TEA) adopts new §§121.1, 121.11-121.14, 121.31-121.35, 121.41, and 121.42, concerning public school finance-personnel, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6367).

Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 121 have been reviewed by the board and are being repealed in a separate submission.

Justification for the new sections will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The new sections will function by establishing a clearer more concise statement of the agency's rule authority.

No comments were received regarding adoption of the new sections.

Subchapter A. General Provisions

• 19 TAC §121.1

The new section is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201016
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter B. Personnel Records

• 19 TAC §§121.11-121.14

The new sections are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201017
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Years of Service for Salary Increment Purposes

• 19 TAC §§121.31-121.35

The new sections are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201018
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter D. Salary Schedule

• 19 TAC §121.41, §121.42

The new sections are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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.

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TRD-9201019
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Chapter 125. Central Education Agency Fund Allocations, Contracts, and Agreements

The Texas Education Agency (TEA) adopts the repeal of §§125.1-125.3, 125.21-125.23, 125.41, 125.42, 125.81, and 125.82, concerning central education agency fund allocations, contracts, and agreements, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6373).

Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 125 have been reviewed by the board and are being repealed.

Justification for the repeals will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provisions.

The repeals will function by establishing a clearer, more concise statement of the agency's rule authority.

No comments were received regarding adoption of the repeals.

Subchapter A. Interagency Contracts

• 19 TAC §§125.1-125.3

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State

Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9200992
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter B. Contracts for Direct Services to the Central Education Agency

• 19 TAC §§125.21-125.23

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9200993
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

Subchapter C. Funds Subcontracted for Public Education

• 19 TAC §§125.41-125.42

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9200994
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

◆ ◆ ◆
**Subchapter E. State Board of
Education Responsibility for
Review and Approval of
Fund Allocations**

◆ ◆ ◆
• 19 TAC §125.81, §125.82

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9200995 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

◆ ◆ ◆
**Chapter 129. Student
Attendance**

The Texas Education Agency (TEA) adopts the repeal of §§129.1-129.3, 129.21, 129.41, 129.61, and 129.62, concerning student attendance, without changes to the proposed text as published in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6533).

Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 129 have been reviewed by the board and are being repealed. A new Chapter 129 was proposed in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6534).

Justification for the repeals will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The repeals will function by establishing a clearer, more concise statement of the agency's rule authority.

No comments were received regarding adoption of the repeals.

Subchapter A. Student Attendance Allowed

◆ ◆ ◆
• 19 TAC §§129.1-129.3

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rule, other than portions of Chapter 73, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9200996 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 12, 1991

For further information, please call: (512) 463-9701

◆ ◆ ◆
**Subchapter B. Compulsory
Student Attendance**

◆ ◆ ◆
• 19 TAC §129.21

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rule, other than portions of Chapter 73, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9200998 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 12, 1991

For further information, please call: (512) 463-9701

◆ ◆ ◆
**Subchapter C. Permissive Pupil
Attendance**

◆ ◆ ◆
• 19 TAC §129.41

The repeal is adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rule, other than portions of Chapter 73, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9200999 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 12, 1991

For further information, please call: (512) 463-9701

◆ ◆ ◆
Subchapter D. Student Attendance Accounting

◆ ◆ ◆
• 19 TAC §129.61, §129.62

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rule, other than portions of Chapter 73, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992.

TRD-9201000 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 12, 1991

For further information, please call: (512) 463-9701

◆ ◆ ◆
The Texas Education Agency (TEA) adopts new §§129.1, 129.21, and 129.22, concerning student attendance, without changes to the proposed text as published in the November 12, 1991, issue of the *Texas Register* (16 TexReg 6534).

Senate Bill, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. All sections of Chapter 129 have been reviewed by the board and are being repealed in a separate submission.

Justification for the new sections will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The new sections will function by establishing a clearer, more concise statement of the agency's rule authority.

No comments were received regarding adoption of the new sections.

Subchapter A. Student Attendance Allowed

• 19 TAC §129.1

The new section is adopted under the Texas Education Code, §11 32(a), which provides the State Board of Education with the authority to establish rule and regulations for the operation of regional education service center

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 January 15, 1992

TRD-9201001 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701



Subchapter B. Student Attendance Accounting

• 19 TAC §129.21, §129.22

The new sections are adopted under Senate Bill 1, §2 25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rule, other than portions of Chapter 73, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992

TRD-9201003 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 12, 1991

For further information, please call: (512) 463-9701



Subchapter AA. Commissioner's Rules

• 19 TAC §129.1021

The Texas Education Agency (TEA) adopts the repeal of §129.1021, concerning student attendance, without changes to the proposed text as published in November 15, 1991, issue of the *Texas Register* (16 *TexReg* 6629)

Senate Bill 1, 71st Legislature, requires the State Board of Education (SBOE) to recon-

sider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period.

Justification for the repeal will be compliance with legislation in Senate Bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The repeal will function by establishing a clearer, more concise statement of the agency's rule authority

No comments were received regarding adoption of the repeal

The repeals are adopted under Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rule, other than portions of Chapter 73, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992

TRD-9200997 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

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For further information, please call: (512) 463-9701



The Texas Education Agency (TEA) adopts new §129.1021, concerning student attendance, without changes to the proposed text as published in the November 15, 1991, issue of the *Texas Register* (16 *TexReg* 6629).

Senate Bill, 71st Legislature, requires the State Board of Education (SBOE) to reconsider all rules affected by this provision so that any rules adopted on these matters must occur under the new rulemaking relationship between the SBOE and the Legislative Education Board. The review of the rules is to be conducted over a three-year period. The sections has been reviewed and is being repealed in a separate submission.

Justification for the new section will be compliance with legislation in Senate bill 1, 71st Legislature, requiring the review of all rules affected by this provision.

The new section will function by establishing a clearer, more concise statement of the agency's rule authority

No comments were received regarding adoption of the new section

The new section is adopted Senate Bill 1, §2.25, passed by the 71st Legislature, Sixth Called Session, which provides the State Board of Education with the authority to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public 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 January 15, 1992

TRD-9201002 Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701



Chapter 141. Teacher Certification

Subchapter L. Certification for Special Services Positions

• 19 TAC §141.250

The Texas Education Agency (TEA) adopts new §§141 250, concerning teacher certification, without changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 *TexReg* 6845).

The section implements statutory requirements which call for the State Board of Education by rule to provide for substitution of management training for part of the qualification for certification as mid-management administrator. The new section was originally proposed in the October 4, 1991, issue of the *Texas Register* (16 *TexReg* 5459), however, the proposal was withdrawn and repropoed because it was the opinion of staff that the recommendation for the substituting of instructional leadership and teacher appraisal training was appropriate in part, but not sufficient to meet the statutory intent of the Texas Education Code, §13 352(d), "so that an outstanding teacher may qualify by substituting approved experience and training for part of the educational requirements"

Justification for the new section will be the implementation of statutory of statutory requirements that call for the State Board of Education by rule to provide for substitution of management training for part of the qualifications for certification as mid-management administrator.

The new section will function by implementing policies that allow individuals who have previously completed instructional leadership training and teacher appraisal training to substitute those skills for commensurate portions of educational training requirements in the university programs for the Mid-Management Administrator certificate

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §13.353(d), which provides the State Board of Education with the authority to adopt rules to provide for substituting management training or experience for part of the qualifications for certification as a principal or superintendent

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 January 15, 1992.

TRD-9201030
Criss Cloudt
Director, Planning
Coordination
Texas Education Agency

Effective date: February 12, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-9701

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 367. Agricultural Water Conservation Program

Agricultural Water Conservation Loan Program

• 31 TAC §§367.70-367.79

The Texas Water Development Board (the board) adopts new 31 TAC §§367.70-367.79, concerning general application procedures for water conservation loans, without changes to the proposed text as published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6994).

The new sections implement the board's agricultural water conservation loan program (the program). The program allows the board or lender districts to make conservation loans for capital equipment or materials, labor preparation costs, and installation costs to improve water use efficiency of water delivery and application on existing irrigation systems, for preparing irrigated land to be converted to dryland conditions or for preparing dryland for more efficient use of natural precipitation.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Water Code, §6.101, and §17.903, which requires the board to adopt rules necessary to carry out the powers and duties of the board.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 22, 1991.

TRD-9201126
Gail Allan
Assistant General Counsel
Texas Water Development Board

Effective date: February 14, 1992

Proposal publication date: December 6, 1991

For further information, please call: (512) 463-7981

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 13. Controlled Substances and Precursor/Apparatus Rules and Regulations

Subchapter A. General Provisions

• 37 TAC §13.1

The Texas Department of Public Safety adopts an amendment to §13.1, concerning general information, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7459).

The adoption of these amendments are necessary for clarification on the part of practitioners as to who is eligible for designation as their agent.

Amendments to this section adds new paragraph (5) and (45) with definitions for a concurring practitioner and registration. Other paragraphs are renumbered accordingly. Paragraph 44 is amended by adding language that requires a registrant to have a current valid registration and deleting reference to §481.063 of the Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §481.064, which provides the Texas Department of Public Safety with the authority to promulgate rules and regulations to administer the provisions of this 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 January 22, 1992.

TRD-9201076
James R. Wilson
Director
Texas Department of Public Safety

Effective date: February 13, 1992

Proposal publication date: December 20, 1991

For further information, please call: (512) 465-2000

Subchapter B. Registration

• 37 TAC §13.15, §13.29

The Texas Department of Public Safety adopts an amendment to §13.15 and new §13.29, concerning registration. Section 13.29 is adopted with changes to the pro-

posed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7462). §13.15 is adopted without changes and will not be republished.

The adoption of this amendment and new section is necessary to ensure the public that only authorized persons by statute may transmit a practitioner's instructions to a pharmacist to dispense a controlled substance.

Section 13.15(1) is amended to include designated agent or a person not needing to register and can lawfully possess controlled substances under the Texas Controlled Substances Act. New §13.29 entitled agent or designated agent is adopted to specify the qualifications that a person so designated is required to meet. Also, a designating practitioner shall maintain and disseminate a current list of designated agents. The word "investigation" in subsection (e) is changed to read as "investigator."

The amendments are adopted under the Health and Safety Code, §481.064 which provides the Texas Department of Public Safety with the authority to promulgate rules and regulations to administer the provisions of this Act.

§13.29. Agent or Designated Agent.

(a) A practitioner may not designate as an agent another practitioner who is not a registrant.

(b) A designated agent must be:

(1) a registered nurse licensed in this state;

(2) a vocational nurse licensed in this state;

(3) a physician assistant licensed in this state; or

(4) an employee located in the designating practitioners office who is a member of the health care staff of the office.

(c) A designating practitioner shall maintain in the practitioner's usual place of business a current written list of persons designated as agents.

(d) Each time a person is added to or deleted from the list, a practitioner shall provide the current list to all pharmacists who have requested such a list.

(e) Upon request of an investigator listed in the Health and Safety Code, §481.073(a), a practitioner shall make the current designated agent list available to the investigator.

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 January 22, 1992.

TRD-9201077
James R. Wilson
Director
Texas Department of Public Safety

Effective date: February 13, 1992

Proposal publication date: December 20, 1991

For further information, please call: (512) 465-2000

Subchapter C. Security

• 37 TAC §13.43

The Texas Department of Public Safety adopts an amendment to §13.43, concerning minimum security controls for all other registrants, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7462).

The adoption of this amendment is necessary to ensure controlled substance are not diverted into the illicit market.

The amendment adds subsection (d) which refers to the penalty for failure to maintain strict security and proper accountability of all controlled substances.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §481.064, which provides the Texas Department of Public Safety with the authority to promulgate rules and regulations to administer the provisions of this 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 January 22, 1992.

TRD-9201078 James R. Wilson
Director
Texas Department of
Public Safety

Effective date: February 13, 1992

Proposal publication date: December 20, 1991

For further information, please call: (512) 465-2000

Subchapter D. Record Keeping

• 37 TAC §13.66

The Texas Department of Public Safety adopts an amendment to §13.66, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7463).

The adoption of this amendment will provide an increase time limit up to seven days in which to get a Schedule II controlled substance prescription filled.

Subsection (g)(3) is amended by revising the time period from the second to the seventh day after the date of issuance of a prescription for which a Schedule II controlled substance may be obtained. Amendment to subsection (j)(1) corrects previous typographical error.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Health and Safety Code, §481.064, which provides the Texas Department of Public Safety with the authority to promulgate rules and regulations to administer the provisions of this 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 January 22, 1992.

TRD-9201079 James R. Wilson
Director
Texas Department of
Public Safety

Effective date: February 13, 1992

Proposal publication date: December 20, 1991

For further information, please call: (512) 465-2000

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department Human Services

Chapter 10. Family Self-Support Services

Child Care Management Services-Statewide Implementation

• 40 TAC §§10.3419, 10.3423, 10.3465

The Texas Department of Human Services (DHS) adopts amendments to §§10.3419, 10.3423, and 10.3465. Section 10.3423 is adopted with changes to the proposed text as published in the December 13, 1991, issue of the *Texas Register* (16 TexReg 7169). Section 10.3419 and §10.3465 are adopted without changes and will not be republished.

The justification for the amendments is an extension of JOBS child care services to AFDC recipients in non-JOBS counties.

The amendments will function by extending JOBS child care services to AFDC recipients, in non-JOBS counties, who are participating in approved self-initiated education and training activities.

Although no public comments were received regarding adoption of the amendments, the department has reworded §10.3423 to omit an obsolete requirement and clarify procedure.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 44, which authorizes the department to administer public assistance and day care programs.

§10.3423. Time Limits for Education or Training Related Child Care.

(a) The Texas Department of Human Services (DHS) limits the time a parent is permitted to receive child care related to education or training as follows.

(1) Parents participating in a job opportunities and basic skills training (JOBS) case plan receive education and training related child care until their JOBS case is closed.

(2) Parents in non-JOBS counties who are participating in approved self-initiated education or training that meets JOBS criteria are eligible to receive JOBS child care until their participation ends.

(3) Parents not eligible for JOBS child care receive education and training related child care until they have completed one of the following:

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

(b) Exceptions to requirements in subsection (a) of this section are granted through the waiver process according to the Texas Department of Human Services (DHS) handbook that addresses the purchase of child care services.

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 January 27, 1992.

TRD-9201193 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: March 1, 1992

Proposal publication date: December 13, 1991

For further information, please call: (512) 450-3765

• 40 TAC §§10.3412-10.3414, 10.3462-10.3464

The Texas Department of Human Services (DHS) adopts amendments to §§10.3412-10.3414 and §§10.3462-10.3464, concerning family self-support services. Sections 10.3413, 10.3414, and 10.3462 are adopted with changes to the proposed text as published in the December 13, 1991, issue of the *Texas Register* (16 TexReg 7168). Sections 10.3412, 10.3463, and 10.3464 are adopted without changes and will not be republished.

The justification for the amendments is that more families will be eligible for child care services and procedures for receiving CCDBG-funded child care will be clearer.

The amendment to §10.3412 will function by clarifying the age limit for children who are mentally or physically handicapped to receive child care services, and the amendments to §§10.3413, 10.3463, and 10.3464 will function by extending child care services to fami-

lies for one year after the family income exceeds 150% of the federal poverty income limit (FPIL), provided the family income remains below 185% of the FPIL. In addition, the amendment to §10.3462 will function by changing the eligibility categories to include AFDC clients in self-initiated education and training and former Child Protective Services clients and removing the refugee program as a funding source for child care services. The amendment to §10.3414 will function by clarifying the procedure for Child Care Management Services (CCMS) contractors to apply for waivers from DHS to allow eligible families to receive child care funded through the child care and development block grant (CCDBG).

Although no comments were received regarding adoption of the amendments, the department has made the following changes. Section 10.3413 has been reworded to clarify the intent. Section 10.3414 has been changed to add General Revenue to the list of funds requiring a waiver for release. Section 10.3462 has been changed to reflect current priority numbers.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 44, which authorizes the department to administer public assistance and day care programs.

§10.3413. Eligibility for Title IV-A Funded Child Care Services.

(a) (No change.)

(b) To be eligible for at-risk Title IV-A funded child care, a family must meet the following eligibility requirements:

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

(3) the family's total gross income must be equal to or less than 150% of the applicable, current federal poverty income level (FPIL). These families will continue to receive child care for one year after the family income exceeds 150% of the FPIL, provided the family income remains below 185% of the FPIL.

§10.3414. Exceptions to Eligibility.

(a) The Child Care Management Services (CCMS) contractor grants eligibil-

ity exceptions to allow individual families to access services funded by Title XX social services block grant (SSBG), general revenue (GR), and child care and development block grant (CCDBG) funds when funds are available and in the following situations:

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

(b) The CCMS contractor must apply for a waiver from DHS to allow families described in subsection (a)(1) and (2) of this section to receive child care paid from Title XX, general revenue, and CCDBG funds.

§10.3462. Priority for Intake Services. The Child Care Management Services (CCMS) contractor provides intake services to clients in the following eligibility categories according to the order of priorities indicated:

(1) Child Protective Services (CPS)—General CPS (Priority 1),

(2) CPS—Aid to Families with Dependent Children (AFDC) foster care (Priority 2),

(3) CPS—State-paid Foster Care (Priority 3),

(4) Job Opportunities and Basic Skills Training (JOBS) participant (Priority 4);

(5) Transitional Child Care (Priority 6);

(6) AFDC recipient—non-JOBS (Priority 7);

(7) Supplemental Security Income recipient (Priority 8);

(8) AFDC Recipient-Approved Self-Initiated Education or Training in non-JOBS counties (Priority 5);

(9) Food Stamp Employment and Training participant (Priority 9);

(10) Food Stamp recipient—Working (Priority 10);

(11) Income Eligible—Working-Not Before/After School (Priority 12);

(12) Food Stamp recipient—Training (Priority 11);

(13) Income Eligible—Training-Not Before/After School (Priority 13);

(14) Category Reserved for Future Use;

(15) Income Eligible Developmentally Delayed—Not Before/After School (Priority 15);

(16) Income Eligible Developmentally Delayed—Before/After School (Priority 15);

(17) Former CPS—Not Before/After School (Priority 16);

(18) Former CPS—Before/After School (Priority 16);

(19) Income Eligible Teen Parents—Not Before/After School (Priority 14);

(20) Income Eligible Teen Parents—Before/After School (Priority 14);

(21) Income Eligible—Working-Before/After School (Priority 12); and

(22) Income Eligible—Training-Before/After School (Priority 13).

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 January 27, 1992.

TRD-9201192

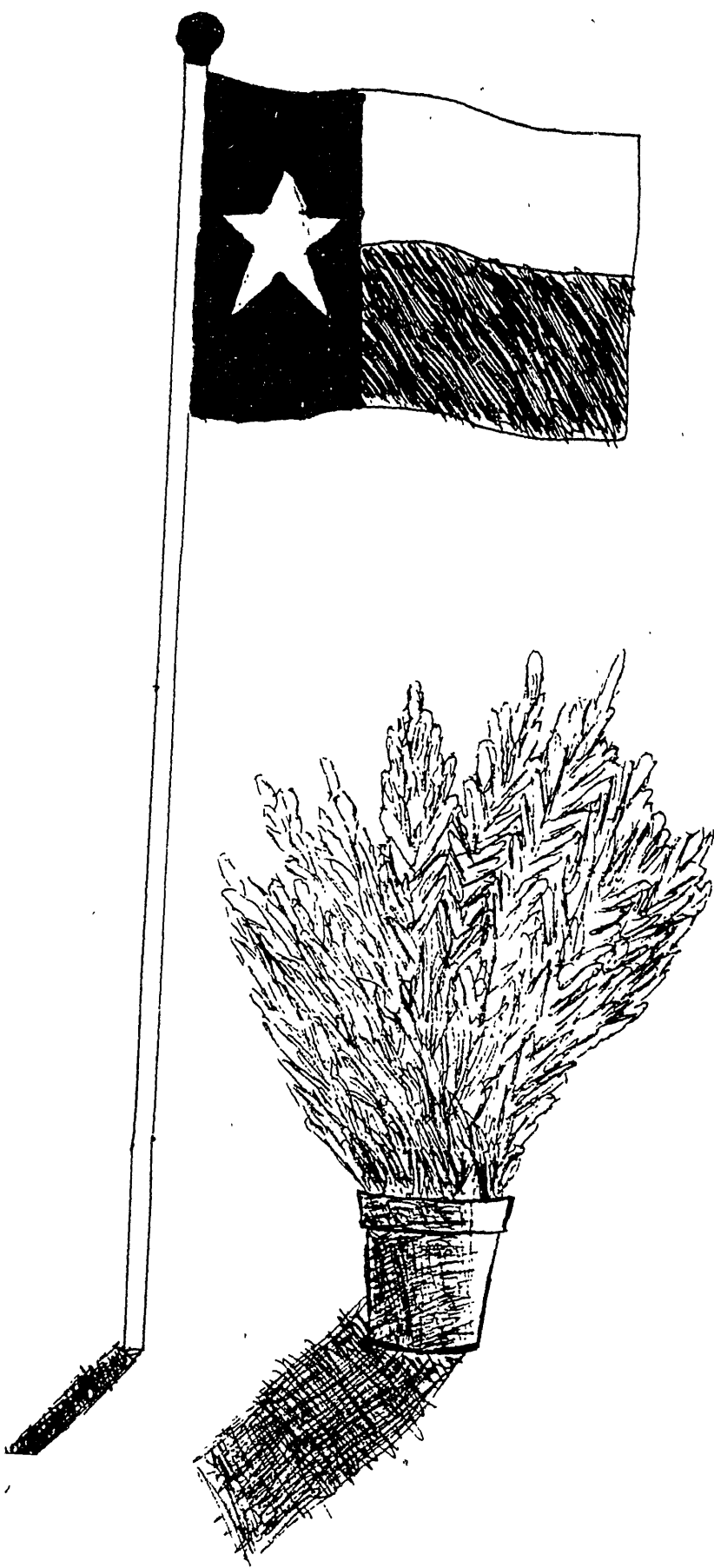
Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: February 17, 1992

Proposal publication date: December 13, 1991

For further information, please call: (512) 450-3765





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Name: Evan Perroni
Grade: 7
School: Clear Lake Intermediate, Clear Creek ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Department on Aging

Wednesday, February 5, 1992, 9:30 a.m. The Texas Board on Aging Planning Committee of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Small Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order; discuss and prepare recommendations to the Texas Board on Aging on TDoA's vision, mission statement, environmental external/internal assessment, goals, and prioritization of goals regarding the Strategic Plan; and adjourn.

Contact: Aliceanne Wallace, Route 2, P.O. Box 2585, Belton, Texas 76513, (817) 939-8178.

Filed: January 24, 1992, 4:10 p.m.

TRD-9201173

Texas Department of Agriculture

Tuesday, February 4, 1992, 9 a.m. The Texas Corn Producers Board of the Texas Department of Agriculture will meet at the Harvey Hotel, 3100 I-40 West, Amarillo. According to the agenda summary, the department will hold a swearing-in ceremony; discuss approval of minutes; financial statement; Carl King's retirement account; research requests; strategic planning session; biennial election report; activity reports; audit; report on annual meeting; and discuss other business.

Contact: Carl King 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: January 24, 1992, 11:19 a.m.

TRD-9201148

Wednesday-Thursday, February 5-6, 1992, 1 p.m. and 8 a.m. respectively. The Texas Grain Sorghum Producers Board of the Texas Department of Agriculture will meet at the Holiday Inn Civic Center, Atrium Room, 801 Avenue Q, Lubbock.

According to the agenda summary, the board will discuss approval of minutes; financial reports; GATT update; research updates; research projects; other funding considerations; property appraisal report; operating board structure; Mexico tour report; and other business.

Contact: Jack Eberspacher, P.O. Box 560, Abernathy, Texas 79311-0560, (806) 298-2543.

Filed: January 23, 1992, 3:17 p.m.

TRD-9201115

Tuesday-Wednesday, February 11-12, 1992, 1 p.m. and 8 a.m. respectively. The Texas Wheat Producers Board of the Texas Department of Agriculture will meet at the Fifth Season Inn-East, Quarterhorse II Room, 2501 I-40 East, Amarillo. According to the complete agenda, the board will hold annual budget session; review and act to amend 1991-1992 budget; and to adopt 1992-1993 budget.

Contact: Bill Nelson, Suite 803, Texas Commerce Bank, 2201 Civic Circle, Amarillo, Texas 79109, (806) 352-2191.

Filed: January 24, 1992, 11:19 a.m.

TRD-9201149

State Banking Board

Friday, January 31, 1992, 4 p.m. The State Banking Board will meet at 2601 North Lamar Boulevard, Austin. According to the agenda summary, the board will discuss approval of previous minutes; consider charter application for United Bank and Trust, Dallas; consider change of domicile application for Interstate Bank North, Houston; consider rescission of interim charter application for New Citizens Bank, Henderson; review of the status of other pending applications; and the board may convene into executive session for consideration of matters pertaining to applications as required by Article 342-115(6)(a) of TBC.

Contact: William F. Aldridge, 2601 North

Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Filed: January 23, 1992, 12:44 p.m.

TRD-9201093

State Bar of Texas

Monday, January 27, 1992, 9 a.m. The Executive Committee of the State Bar of Texas met at the Marriott-Mandalay/Las Colinas, Salon D, 221 East Las Colinas Boulevard, Irving. According to the complete emergency revised agenda, the committee heard a report from the board committee; grant review-Raymond Kerr; considered approval of grant for submission to Texas Bar Foundation: "Influence of Spain on Texas Legal System", \$7,650 (sponsor State Bar of Texas). The emergency status was necessary as item required immediate action due to timing of application receipt and next meeting of board and foundation.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: January 23, 1992, 11:11 a.m.

TRD-9201081

Monday-Tuesday, January 27-28, 1992, 9 a.m. The Board of Directors of the State Bar of Texas met at the Marriott-Mandalay/Las Colinas, Salon D, 221 East Las Colinas Boulevard, Irving. According to the complete emergency revised agenda, on Tuesday, the board heard report from board committees, grant review-Raymond Kerr; considered approval of grant for submission to Texas Bar Foundation: "Influence of Spain on Texas Legal System", \$7,650 (sponsor State Bar of Texas). The emergency status was necessary as item required immediate action due to timing of application receipt and next meeting of board and foundation.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: January 23, 1992, 11:12 a.m.

TRD-9201082

Texas Bond Review Board

Friday, January 31, 1992, 10 a.m. The Texas Bond Review Board will meet at the Reagan Building, 105 West 15th Street, Room 102, Austin. According to the complete agenda, the board will call the meeting to order; consider proposed issue of application of Texas Public Finance Authority-revenue bonds for funds for General Services Commission; discuss approval of contract for financial advisor for public school facilities funding program; and adjourn.

Contact: Tom K. Pollard, 506 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 463-1741.

Filed: January 24, 1992, 4:54 p.m.

TRD-9201121

Texas Catastrophe Property Insurance Association

Thursday, February 6, 1992, 9 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will meet at the TCPIA Offices, All Purpose Room, 2801 South Interregional, Austin. According to the complete agenda, the board will hear report of reinsurance committee; underwriting committee; any other business that may come before the board; and adjourn.

Contact: F. R. "Buddy" Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-9612.

Filed: January 23, 1992, 12:15 p.m.

TRD-9201092

Texas Department of Criminal Justice, Board of Pardons and Paroles

Wednesday, February 5, 1992, 10 a.m. The Board of Pardons and Paroles of the Texas Department of Criminal Justice will meet at the Beto Criminal Justice Center, Hazel B. Kerper Courtroom, Huntsville. According to the complete agenda, the board will consider commutation of sentence for Johnny Frank Garrett, Execution Number 729.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2744.

Filed: January 27, 1992, 3:27 p.m.

TRD-9201244

Texas Council on Vocational Education

Thursday-Friday, February 20-21, 1992, 7:45 a.m. and 8:30 a.m. respectively. The Texas Council on Vocational Education will meet at the Park Inn, Huntsville Room 1407 I-45, Huntsville. According to the agenda summary, on Thursday, the council will tour education and training programs offered through the Texas Department of Corrections Windham ISD. On Friday, the council will hold a regular business meeting to hear public comments/testimony on current issues regarding vocational education; report on the federal vocational funding distribution project and act on the report; reports from members on various meetings attended including the State Board of Education and Texas Higher Education Coordinating Board meetings; receive a status report on the 1992 Texas Vocational Education Awards Program; discuss upcoming meetings; council's schedule of work; budget and expenditures; and conduct other business.

Contact: Will Reece, 1717 West Sixth Street, Suite 360, Austin, Texas 78703, or P.O. Box 1886, 78767, (512) 463-5490.

Filed: January 24, 1992, 10:47 a.m.

TRD-9201133

Texas Education Agency

Friday, January 31, 1992, 11 a.m. The Committee on Student Learning of the Texas Education Agency will hold an emergency meeting at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee will address charge to the committee; discussion of organization of committee including technical advisory committees; size and scope of technical advisory committees; discussion of timeline for future meeting schedule; and discussion of interim actions or positions concerning outcomes and assessment. The emergency status is necessary as the agency finds it is of urgent public necessity for this meeting to be held because House Bill 2885, Section 21.5513(f) requires the committee to meet not later than January 15, 1992. Nominations could not be confirmed by that date; therefore, it is necessary to call the first meeting as close to the date mandated in legislation as possible.

Contact: Marvin Veselka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9533.

Filed: January 24, 1992, 4:50 p.m.

TRD-9201184

Tuesday, February 4, 1992, 1 p.m. The Advisory Board on National and Commu-

nity Service Act of the Texas Education Agency will meet at the Texas Higher Education Coordinating Board, Room 5-200, Building Five, 7745 Chevy Chase Drive, I-35 at 183, Austin. According to the complete agenda, the board will make opening statements; update on application for funding under the Nation and Community Service Act; application review and comments; and determination of next meeting date, time, and place.

Filed: Sylvia Marquez, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9444.

Filed: January 24, 1992, 4:50 p.m.

TRD-9201185

Thursday, February 6, 1992, 10:30 a.m. The State Board of Education, State Textbook Committee, Committee of the Whole of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committees will hold a public hearing on the 1992 proclamation of the State Board of Education advertising for bids on textbooks will be held before the Committee of the Whole. The proclamation advertises for bids, gives bids, gives notice of public meetings of the board for the purpose of adoption and making contracts, establishes textbook quotas, and specifies in detail content and other requirements for textbooks submitted for consideration for adoption. Testimony at the public hearing is limited to residents of Texas and non-residents who are official representatives of publishing companies. The deadline for requests to appear at the hearing is 5 p.m. on January 31, 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: January 24, 1992, 4:50 p.m.

TRD-9201183

Texas Employment Commission

Monday, February 3, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to discuss Administaff, Inc. versus James Kaster, et al.; actions, if any, resulting from executive session; consideration for possible final adoption of amendment to 40 TAC §301.13 concerning commission hearings involving coverage and contributions or reimbursements; internal procedures of commission appeals; consideration and action on tax liability cases and

higher level appeals in unemployment compensation cases listed on Commission Docket 5; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: January 24, 1992, 4:13 p.m.

TRD-9201174

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**State Board of Registration
for Professional Engineers**

Monday, February 3, 1992, 2:30 p.m. The Ad Hoc Committee on Registration by Discipline of the State Board of Registration for Professional Engineers will meet at 1917 IH-35 South, Board Room, Austin. According to the complete agenda, the committee meeting will convene by Chairman Beal; take roll call; recognize and welcome any visitors; discuss merits of registration by discipline; and adjourn.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: January 24, 1992, 2:01 p.m.

TRD-9201160

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General Land Office

Wednesday, February 5, 1992, 3 p.m. The Veterans Land Board of the General Land Office will meet at the Stephen F. Austin Building, Room 831, Austin. According to the agenda summary, the board will discuss approval of the October 30, 1991 minutes; approval of amendments to VLB investment policy; extend sale of selected Type II forfeited land tracts; discussion of Housing Assistance Program; request for reinstatement of eligibility; consideration of nominations, terms, conditions and procedures for April 7, 1992 oil, gas and mineral lease sale: VLB Accounts 571-123869 and 491-113299; forfeiture action on delinquent accounts; order for sale forfeited accounts; date for the next Type I forfeited land sale.

Contact: Mae Vrazel, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5340.

Filed: January 27, 1992, 4:10 p.m.

TRD-9201251

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**Office of the Governor,
Criminal Justice Division**

Monday, February 3, 1992, 9 a.m. The Texas Crime Stoppers Advisory Council, Criminal Justice Division, Office of the Governor will meet at the Driskill Hotel, Sixth and Brazos Streets, Board Room,

Austin. According to the complete agenda, the council will call the meeting to order; discuss approval of minutes; discuss crime stoppers assistance grants (progress report); state conference committee report; education committee report; proposed committees of Texas Crime Stoppers Advisory Council and committee appointments (i.e. education, fund raising, conference, media); and adjourn.

Contact: David Cobbs, P.O. Box 12428, Austin, Texas 78711, (512) 463-1784.

Filed: January 24, 1992, 9:07 a.m.

TRD-9201123

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Texas Department of Health

Friday, February 7, 1992, 9 a.m. The HIV Services Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, 1100 West 49th Street, Room M-739, Austin. According to the complete agenda, the committee will announce committee appointments; discuss approval of April 12, 1991 meeting minutes; conduct subcommittee meetings; hear subcommittee reports; discuss and possibly act on the Ryan White/Title II reapplication; and hear public comments.

Contact: Betty Cooper, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7209.

Filed: January 24, 1992, 4 p.m.

TRD-9201170

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**Texas Department of Human
Services**

Thursday, February 6, 1992, 10 a.m. The Client Self-Support Services Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, Second Floor, Classroom Two, West Tower, Austin. According to the complete agenda, the council will call the meeting to order; discuss approval of minutes; CSS reorganization; strategic plan; self-support services changes; update on the Texas summit on adolescent pregnancy prevention; update on Federal Legislation; House Bill 7 client access pilots; information items; action items; feedback on past actions; open discussion; and adjourn.

Contact: Lucretia Dennis Small, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4921.

Filed: January 27, 1992, 9:37 a.m.

TRD-9201195

Thursday, February 6, 1992, 10 a.m. The Sanctions and Penalties Advisory Committee of the Texas Department of Human

Services will meet at 701 West 51st Street, First Floor, East Tower, Public Hearing Room, Austin. According to the complete agenda, the committee will hear opening comments; deputy commissioner's comments; approval of minutes; advisory committee rules; advisory committee procedures; review of proposed sanctions and penalties rules; open discussion; plan next meeting; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 459-3053.

Filed: January 28, 1992, 9:10 a.m.

TRD-9201261

Thursday, February 6, 1992, 2 p.m. The Interagency Coordinating Council on Dropout Prevention and Recovery of the Texas Department of Human Services will meet at 701 West 51st Street, First Floor, West Tower, Conference Room 103-W, Austin. According to the complete agenda, the council will call the meeting to order and make introductions; discuss approval of the minutes of the December 12, 1991 meeting; status report on compendium updates; presentations on agency programs/services for children born to substance abusing mothers; other business; and adjourn.

Contact: Cindy Marler, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3662.

Filed: January 28, 1992, 9:09 a.m.

TRD-9201260

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Texas Department of Insurance

Wednesday, February 5, 1992, 9 a.m. The Commissioners Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment to the Articles of Incorporation of Titan Indemnity Company, San Antonio, amending the purpose cause of the corporation. Docket Number 11408.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 28, 1992, 8:29 a.m.

TRD-9201258

Wednesday, February 5, 1992, 1:30 p.m. The Commissioners Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Robert L. Sanchez, Midlothian, for a Group I, Legal Reserve Life Insurance Agent's license.

Docket Number 11402.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 28, 1992, 8:29 a.m.

TRD-9201257

Monday, February 10, 1992, 1:30 p.m.

The Commissioners Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether a cease and desist order should be issued against Barnhardt Marine Insurance, Inc., Frank L. Barnhardt, and Plymouth, Inc. Docket Number 11396.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 28, 1992, 8:29 a.m.

TRD-9201256

Texas State Board of Medical Examiners

Friday-Saturday, January 24-25, 1992, 1 p.m. and 8 a.m. respectively. The Texas State Board of Medical Examiners met at 1812 Centre Creek Drive, Suite 300, Austin. According to the emergency revised agenda summary, the board reviewed and discussed agreed orders and met in executive session to discuss personnel matters; and deleted a licensure hearing. The board met in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484. The emergency status was necessary as information had come to the attention of the agency that required prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728.

Filed: January 23, 1992, 3:05 p.m.

TRD-9201113

Texas Council on Offenders with Mental Impairments

Wednesday, February 5, 1992, 9 a.m. The Executive Committee of the Texas Council on Offenders with Mental Impairments will meet at the UT Mental Sciences Institute, Kahn Room, 1300 Moursund Avenue, Houston. According to the complete agenda, the committee will call the meeting to order; hear public comments; discuss approval of the minutes of the previous meeting; discuss 1992-1993 biennium activities; discuss the council's structure, membership and participation; strategic plan and its pri-

orities; hear the executive director's report; and discuss any old or new business.

Contact: Pat Hamilton, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-7406.

Filed: January 27, 1992, 8:47 a.m.

TRD-9201190

Board of Nurse Examiners

Tuesday-Thursday, January 28-30, 1992, 8 a.m. The Board of Nurse Examiners met at the John H. Reagan Building, 15th Street, Room 101, Austin. According to the complete emergency revised agenda, the board heard request for Attorney General's Opinion; held consent hearings: Sue L. Dodd, TX #256382 and Roy Glenn Witherow, TX #553508; voluntary surrender: Brown E. Day, TX #229856, Rhonda L. Jones, TX #513770 and Alverta McClure, TX #445904; and met in executive session to discuss pending litigation in Cause Number 96-135647-91, in the matter of Katherine J. Foltz versus Texas Board of Nurse Examiners. The emergency status was necessary as these items needed to be considered by the board prior to their next regularly scheduled meeting in March.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: January 23, 1992, 3:05 p.m.

TRD-9201114

State Board of Plumbing Examiners

Monday, February 3, 1992, 10 a.m. The Personnel Committee of the State Board of Plumbing Examiners will meet at 929 East 41st Street, Austin. According to the complete agenda, the committee will review applications for the position of administrator of the Texas State Board of Plumbing Examiners and collectively decide which ones to interview.

Contact: Lynn Brown, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: January 24, 1992, 11:14 a.m.

TRD-9201147

Public Utility Commission of Texas

Monday, February 3, 1992, 3 p.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete

agenda, the commission will hold a prehearing conference in Docket Number 10802-complaint of International Claim Service Corporation against Southwestern Bell Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 24, 1992, 4:50 p.m.

TRD-9201182

Friday, February 14, 1992, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 10726-application for sale, transfer, or merger of Cap Rock Electric Cooperative, Inc. and Hunt-Collin Electric Cooperative, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 23, 1992, 3:31 p.m.

TRD-9201117

Tuesday, February 18, 1992, 10 a.m. (rescheduled from Wednesday, January 29, 1992, 9 a.m.). The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10726-application for sale, transfer, or merger of Cap Rock Electric Cooperative, Inc. and Hunt-Collin Electric Cooperative, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 23, 1992, 3:31 p.m.

TRD-9201118

Tuesday, April 14, 1992, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10831-application of Southwestern Bell Telephone Company to revise its tariff to redefine the Point of Demarcation ("Demarc") and the location of the Network Interface (NI).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 24, 1992, 3:01 p.m.

TRD-9201169

Texas Low-Level Radioactive Waste Disposal Authority

Tuesday, February 11, 1992, 1 p.m. The Technical Committee of the Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet at the University of Texas, Bureau of Economica Geology, Balcones Research Center, 10100 Burnet Road, Building #130, Room 1.202, Austin. According to the complete agenda, the board will call the meeting to order; staff presentation on the evaluation of potential sites in Hudspeth County; and adjourn.

Contact: L. R. Jacobi, Jr., 7701 North Lamar Boulevard, #300, Austin, Texas 78752, (512) 451-5292.

Filed: January 27, 1992, 3:40 p.m.

TRD-9201247

Sunday, February 16, 1992, 4 p.m. The Public Information Committee of the Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet at the Doubletree Hotel, 6505 North IH-35, Austin. According to the complete agenda, the board will call the meeting to order; staff presentation on Public Information Program; and adjourn.

Contact: L. R. Jacobi, Jr., 7701 North Lamar Boulevard, #300, Austin, Texas 78752, (512) 451-5292.

Filed: January 27, 1992, 3:40 p.m.

TRD-9201248

Sunday, February 16, 1992, 6 p.m. The Workshop of the Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet at the Doubletree Hotel, Phoenix South Room, 6505 North IH-35, Austin. According to the complete agenda, the board will call the meeting to order; presentations by opposition groups and others interested in a disposal site in Hudspeth County; and adjourn.

Contact: L. R. Jacobi, Jr., 7701 North Lamar Boulevard, #300, Austin, Texas 78752, (512) 451-5292.

Filed: January 27, 1992, 3:40 p.m.

TRD-9201249

Railroad Commission of Texas

Monday, February 3, 1992, 9:30 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room (12-126), Austin. Agendas follow.

The commission will consider and act on the Investigation Division Director's report on division administration, investigations,

budget, and personnel matters.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: January 24, 1992, 10:52 a.m.

TRD-9201138

The commission will consider and act on the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters.

Contact: P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

Filed: January 24, 1992, 10:53 a.m.

TRD-9201139

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: January 24, 1992, 10:53 a.m.

TRD-9201140

The commission will consider category determination under §§102(c)(1)(B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Box 12967, Austin, Texas 78711, (512) 463-6755.

Filed: January 24, 1992, 10:53 a.m.

TRD-9201141

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

Filed: January 24, 1992, 10:53 a.m.

TRD-9201142

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

Filed: January 24, 1992, 10:53 a.m.

TRD-9201143

The commission will consider and act on the Division Director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Educa-

tion Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711, (512) 463-7110.

Filed: January 24, 1992, 10:54 a.m.

TRD-9201144

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. Consideration of appointment, reassignment and/or termination of various positions including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7274.

Filed: January 24, 1992, 10:54 a.m.

TRD-9201145

The commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including, but not limited to, scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act, including to receive legal advice regarding pending and/or contemplated litigation.

Contact: Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7274.

Filed: January 24, 1992, 10:54 a.m.

TRD-9201146

Wednesday, February 19, 1992, 1:30 p.m. The commission will hold a statewide hearing on oil and gas.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: January 24, 1992, 10:52 a.m.

TRD-9201137

School Land Board

Tuesday, February 4, 1992, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda summary, the board review and discuss approval of previous board meeting minutes; opening and consideration of bids received for the February 4, 1992 special oil and gas lease sale; pooling applications, Wildcat Field, Matagorda County; Southern Pine (Travis Peak) Field, Cherokee County; Giddings, Austin Chalk Field, Brazos and Burleson Counties; Giddings, Austin Chalk-3 Field, Fayette County; Red Fish Reef, S.W. and Wildcat Fields, Chambers County; applications to lease highway rights of way for oil and gas, Victoria, Burleson, Terry, Sabine and Henderson Counties; direct land sale, Yoakum County; coastal public lands-commercial lease application, Galveston Bay, Galveston and Chambers Counties; final adoption of amendment to coastal public land fee rule, 31 TAC, §155.10; coastal public lands-structure permit renewals, Cold Pass, Brazoria County; meet in executive session to discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: January 27, 1992, 4:10 p.m.

TRD-9201250

University of Houston System

Tuesday, January 28, 1992, 1:30 p.m. The Board of Regents of the University of Houston System held an emergency meeting at 1600 Smith, 34th Floor, Conference Room I, University of Houston System Offices, Houston. According to the emergency revised agenda summary, the board discusses and/or acted upon the following: appointment, evaluation, or dismissal of personnel; information reports from employees; purchase, exchange, lease or value of real property, negotiated contracts for prospective gifts or donations; private consultation with attorney; and report and action from executive session. The emergency status was necessary as it was originally posted as executive meeting. The full board will be in attendance. Therefore, the notice is revised to reflect a full board meeting. The agenda stays the same.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: January 27, 1992, 3:38 p.m.

TRD-9201246

Tuesday, January 28, 1992, 1:30 p.m. The

Board of Regents Executive Committee of the University of Houston System met at 1600 Smith, 34th Floor, Conference Room I, University of Houston System Offices, Houston. According to the complete agenda, the committee discussed and/or acted upon the following: appointment, evaluation, or dismissal of personnel; informational reports from employees; purchase, exchange, lease or value of real property, negotiated contracts for prospective gifts or donations; private consultation with attorney; and report and action from executive session.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: January 24, 1992, 10:47 a.m.

TRD-9201136

Texas Water Commission

Wednesday, January 29, 1992, 10 a.m. The Texas Water Commission held an emergency meeting at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the complete agenda, the commission met in executive session to discuss the lease of real property. The emergency status was necessary as the commissioners and staff had to discuss a new long term lease option that would expire in less than seven days.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 24, 1992, 11:49 a.m.

TRD-9201150

Wednesday, February 5, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission, including specifically the adoption of new or amended agency regulations. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 24, 1992, 4:37 p.m.

TRD-9201181

Wednesday, February 5, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. Ac-

ording to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 24, 1992, 4:37 p.m.

TRD-9201180

Wednesday, February 5, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the revised agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1992, 8:50 a.m.

TRD-9201259

Wednesday, February 5, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 28, 1992, 12:35 p.m.

TRD-9201218

Tuesday, February 11, 1992, 1 p.m. The Texas Water Commission will meet at the El Paso City Hall, 10th Floor Conference Room, Corner of Santa Fe and Missouri Streets, El Paso. According to the revised agenda summary, the commission will hold a hearing on Butterfield Water Systems, Inc.'s water rate increase effective November 19, 1991 for its service area located in El Paso County. Docket Number 9305-G.

Contact: Joseph W. O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:19 p.m.

TRD-9201100

Friday, February 14, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 512, Austin. According to the agenda summary, the commission will hold a hearing on an appeal filed by Staff Water Supply Corporation concerning wholesale water rates charged by the City of Carbon in Eastland County. Docket Number 9240-M.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:19 p.m.

TRD-9201101

Tuesday, February 18, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028A, Austin. According to the agenda summary, the commission will hold a hearing on the petition filed with the commission by the City of Arlington requesting the commission to fix reasonable rates for sewage treatment service provided to the City of Arlington by the City of Fort Worth. Docket Number 9261-A.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:20 p.m.

TRD-9201102

Tuesday, February 25, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1030A, Austin. According to the agenda summary, the commission will hold a hearing on an enforcement action against Pete Bell doing business as Crowley Two Acre Water System, who provides retail water utility service for compensation to the residents of the Crowley Two Acre Subdivision in Johnson County. Docket Number 9121-E.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:20 p.m.

TRD-9201103

Tuesday, March 3, 1992, 10 a.m. The Texas Water Commission will meet at the Henderson County Courthouse Annex Building, Third Floor Conference Room, Athens. According to the agenda summary, the commission will hold a hearing on Robert D. Hawley doing business as Clear Creek Water Company, Inc.'s rate increase effective November 1, 1991 for its service

area located in Henderson County. Docket Number 9323-R.

Contact: Joseph W. O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:20 p.m.

TRD-9201104

Thursday, March 5, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1149A, Austin. According to the agenda summary, the commission will hold a hearing on Water Maintenance Company's water rate increase effective October 1, 1991 for its service area located in Polk County. Docket Number 9262-G.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:20 p.m.

TRD-9201105

Thursday, March 5, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 119, Austin. According to the agenda summary, the commission will hold a hearing on M. C. Water Supply's water rate increase effective December 15, 1991 for its service area located in Henderson County. Docket Number 9332-G.

Contact: Joseph W. O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:20 p.m.

TRD-9201106

Monday, March 9, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 512, Austin. According to the agenda summary, the commission will hold a hearing on Gonzales County Water Supply Corporation's fee for new connections for water service provided to service areas in Gonzales and Caldwell Counties. Docket Number 9303-X.

Contact: Kerry D. Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:21 p.m.

TRD-9201107

Monday, March 9, 1992, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028A, Austin. According to the agenda summary, the commission will hold a hearing on A. I.M. Company, Inc.'s water rate increase effective December 1, 1991 for its service area located in Lubbock County. Docket Number 9314-G.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 23, 1992, 2:21 p.m.

TRD-9201108

Wednesday, March 11, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing on Paul A. Piefer and wife, Jean Piefer's application to divert 560 acre-feet of water per year from Town Branch, tributary of Bear Pen Creek, tributary of White Oak Creek, tributary of Sulphur River, Sulphur River Basin. The water will be used to irrigate 207 acres of crop land located approximately 0.5 miles northeast of Mount Vernon, Franklin County.

Contact: Rick Airey, P.O. Box 13087, Austin, Texas 78711, (512) 371-6384.

Filed: January 23, 1992, 2:21 p.m.

TRD-9201109

Thursday, March 12, 1992, 9 a.m. (rescheduled from Thursday, January 23, 1992). The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1028A, Austin. According to the agenda summary, the office will consider an application by Capital View Joint Venture, for the renewal to Permit Number 12972-01 which authorizes the discharge of treated domestic wastewater into the Colorado River, at the Carson Creek confluence in Segment Number 1428 of the Colorado River Basin. The wastewater treatment facilities, which have not yet been constructed are to be off of Thornberry Road approximately 3,300 feet southeast of Dalton Road and 4,200 feet northeast of State Highway in Travis County.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 24, 1992, 2:26 p.m.

TRD-9201165

Regional Meetings

Meetings Filed January 23, 1992

The Brazos Valley Quality Work Force Planning Committee met at 301 Post Office Street, Room CC9, Bryan, January 28, 1992, at 11:30 a.m. Information may be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801, (409) 822-7638. TRD-9201095

The El Oso Water Supply Corporation Board of Directors met at their Office, FM 99, Karnes City, January 28, 1992, at 7 p.m.

Information may be obtained from Hilmer Wagener, P.O. Box 309, Karnes City, Texas 78118, (512) 780-3539. TRD-9201112.

The Golden Crescent Regional Planning Commission Board of Directors met at the DuPont Clubhouse, Bloomington Highway, Victoria, January 29, 1992, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9201099.

The Houston-Galveston Area Council 1992 General Assembly will meet at the Westin Galleria Hotel, 5060 West Alabama in the Galleria, Monarch Room, 24th Floor, Houston, January 31, 1992, at 6:30 p.m. TRD-9201080.

The Lee County Appraisal District Board of Directors met at 218 East Richmond Street, Giddings, January 29, 1992, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9201110.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, January 27, 1992, 7 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9201111.

The Middle Rio Grande Development Council Board of Directors met at the Las Moras Restaurant, Highway 90 West, Fort Clark Springs, Brackettville, January 29, 1992, at 1 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9201122.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, February 13, 1992, at 7 p.m. Information may be obtained from Ron Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9201097.

The Sharon Water Supply Corporation Board of Directors met at the Office of Sharon Water Supply Corporation, Highway 37 South, Winnsboro, January 27, 1992, at 7 p.m. Information may be obtained from Gerald Brewer, Route 5, P.O. Box 25-C-10, Winnsboro, Texas 75491, (903) 342-3525. TRD-9201074.

The South Plains Quality Work Force Unlimited Community Action Association, Inc. will meet at the Center for Innovation, 2579 Loop 289, Lubbock, January 31, 1992, at 2 p.m. Information may be obtained from Carol Barnette, P. O. Box 610, Levelland, Texas 79336, (806) 894-7293. TRD-9201098.



Meetings Filed January 24, 1992

The Coryell County Appraisal District Board of Directors met at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, January 30, 1992, at 6 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9201166.

The Dallas Area Rapid Transit Search Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 28, 1992, at 10:30 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201239.

The Dallas Area Rapid Transit Minority Affairs Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 28, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201177.

The Dallas Area Rapid Transit Audit Committee met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 28, 1992, at 2:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201178.

The Dallas Area Rapid Transit Board of Directors' met at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 28, 1992, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201175.

The Dallas Area Rapid Transit CBD Transit Master Plan Subcommittee will meet at the DART Office, 601 Pacific Avenue, Board Room, Dallas, January 31, 1992, at 8 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9201176.

The East Texas Council of Governments Private Industry Council met at the ETCOG Offices, Kilgore, January 30, 1992, at 9:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9201157.

The Heart of Texas Region Mental Health and Mental Retardation Center Board of Trustees met at 110 South 12th Street, Waco, January 30, 1992, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451. TRD-9201131.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, January 30, 1992, at 7 p.m.

Information may be obtained from Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9201163.

The Lubbock Regional Mental Health and Mental Retardation Center Board of Trustees met at 3801 Avenue J, Board Room, Lubbock, January 27, 1992, at noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202. TRD-9201168.

The Red River Boundary Commission met at the Grayson County Community College, East Campus, Silver Wings Club, 691 West, Sherman, January 29, 1992, at 1:30 p.m. Information may be obtained from Charlotte Spragins, Route 1, P.O. Box 419, Ashton Road, Burkburnett, Texas 76354, (817) 569-0647. TRD-9201171.

The Region VIII Education Service Center Board of Directors met at the Holiday Inn Restaurant, Highway 271, Mt. Pleasant, January 30, 1992, at 11:45 a.m. (rescheduled from January 23, 1992). Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894. TRD-9201164.

The Sabine Valley Center Personnel Committee met at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, January 27, 1992, at 9:30 a.m. Information may be obtained from Mack Blackwell, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9201124.

The Taylor County Education District Board of Trustees met at 1534 South Treadaway, Abilene, January 30, 1992, at 4 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9201158.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, February 6, 1992, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9201125.

◆ ◆ ◆ Meetings Filed January 27, 1992

The Bexar Appraisal District Agricultural Appraisal Advisory Board held an emergency meeting at 535 South Main Street, San Antonio, January 29, 1992, at 6 p.m. The emergency status was necessary as this was the only time a quorum of members could meet. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9201211.

The Brazos Valley Solid Waste Management Agency Board of Trustees will meet at the City of College Station Legal Library, 1101 Texas Avenue, College Station, January 31, 1992, at 1:15 p.m. Information may be obtained from Cathy Locke, 1101 Texas Avenue, College Station, Texas 77840, (409) 764-3507. TRD-9201253.

The Central Appraisal District of Taylor County Board of Directors met at 1534 South Treadaway Street, Abilene, January 30, 1992, at 5 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9201243.

The Deep East Texas Council of Governments Solid Waste Task Force met at the Tyler County Courthouse, Commissioners Courtroom, Tyler County, Woodville, January 30, 1992, at 2 p.m. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9201194.

The Guadalupe-Blanco River Authority Board of Directors will meet at the Authority's Offices, 933 East Court Street, Seguin, January 31, 1992, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822. TRD-9201210.

The Lower Rio Grande Valley Development Council Annual Membership and Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, January 30, 1992, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (512) 682-3481. TRD-9201214.

The Millersview-Doole Water Supply Corporation Board of Directors will meet One Block West of FM 765 and FM 2134, Millersview, February 3, 1992, at 7 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9201215.

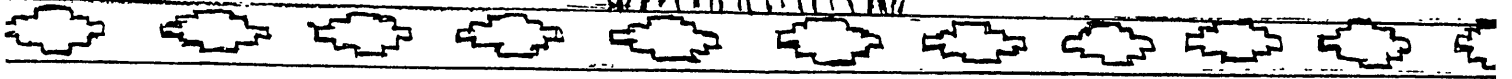
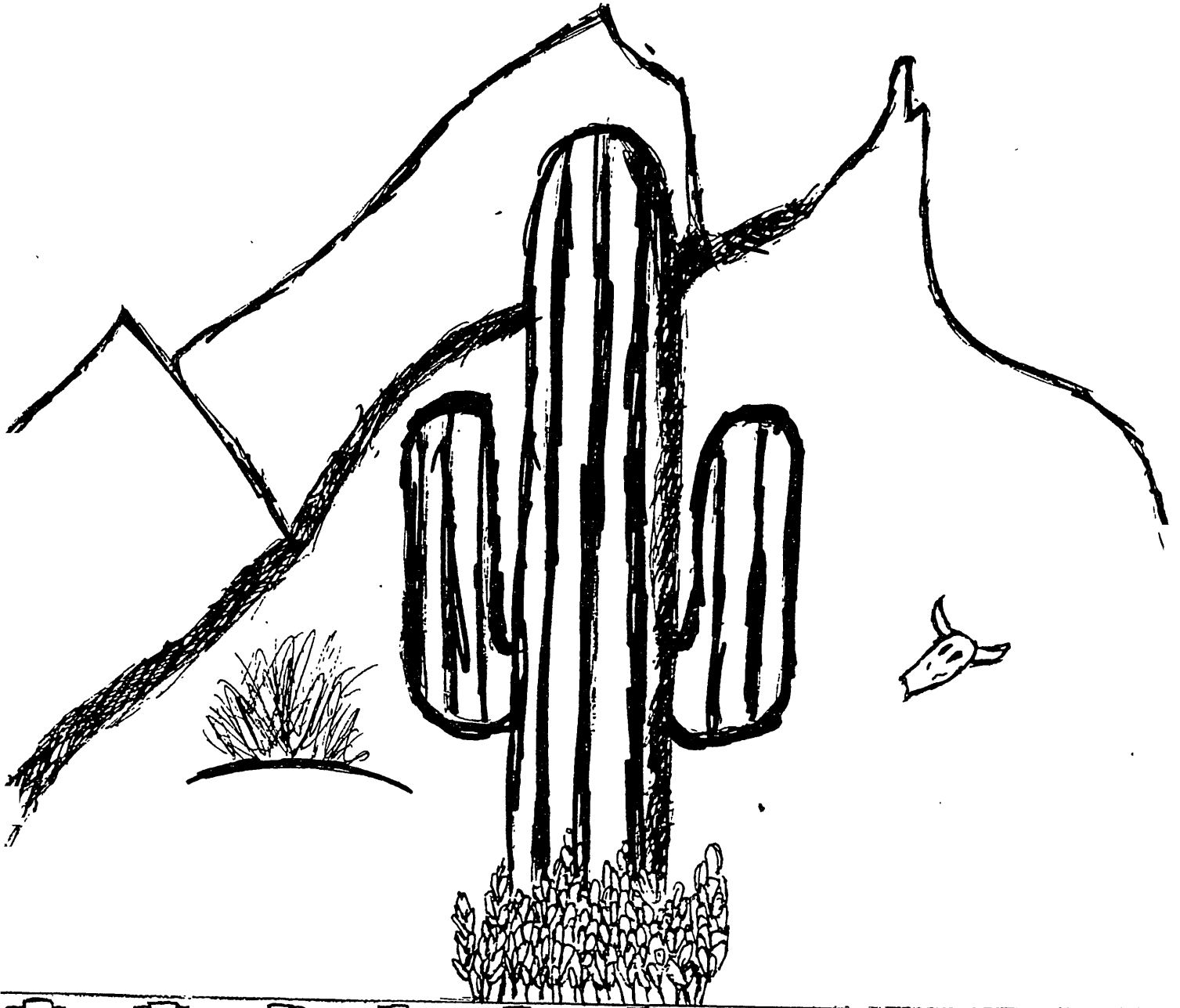
The Region 18 Education Service Center Board of Directors will meet at 2811 LaForce Boulevard, Midland, February 6, 1992, at 7 p.m. Information may be obtained from Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9201216.

The Upper Rio Grande Quality Work Force Planning Region VIII will meet at the Culberson County I.S.D. (Library), Van Horn, February 7, 1992, at 11:30 CST. Information may be obtained from Otis E. Burnett, 1155 Westmoreland, Suite 235, El Paso, Texas 79925-5649, (915) 779-6623. TRD-9201213.

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**Meetings Filed January 28,
1992**

The North Plains Groundwater Conservation District Number Two Board of Directors will meet at the District Office, 603 East First Street, Dumas, February 3, 1992, at 10 a.m. Information may be obtained from Richard Bowers, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401. TRD-9201240.

◆ ◆ ◆



TEXAS



Name: Michael Carver

Grade: 7

School: Clear Lake Intermediate, Clear Creek ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Correction of Error

The Texas Commission on Alcohol and Drug Abuse adopted 40 TAC §150.16 and §150.22 concerning counselor licensure. The rules were published in the January 7, 1992, *Texas Register*. Due to a typesetting error, text was omitted.

In §150.16(6), the word "directly" was omitted. It should read "revealing or causing to be revealed, directly or indirectly, a confidential communication made to the licensed chemical dependency counselor by a client or recipient of services, except as required by law;".

In §150.22(c)(3), the words "and shall not offer services" were omitted. It should read "be required to recognize the limitations of his or her ability and shall not offer services or utilize techniques which exceed that counselor's professional competence;".

Additionally, in the January 3, 1992, issue of the *Register* (17 TexReg 47), the effective date of the adoption is shown as January 1, 1992. The effective is January 10, 1992.

Texas Council on Alzheimer's Disease and Related Disorders

Correction of Error

The Texas Council on Alzheimer's Disease and Related Disorders' notice of open meeting for January 30, 1992, was published in the January 10, 1992, *Texas Register* (17 TexReg 260). The word "hear" should not have been printed before "legislative report" in the listing of agenda items.

Comptroller of Public Accounts

Correction of Errors

The Comptroller of Public Accounts proposed new 34 TAC §3.5, concerning waiver of penalty or interest, and new §7.152, concerning application for license, and new §7.153, concerning qualifications for license. The rules were published in the January 7, 1992, *Texas Register* (17 TexReg 98).

Due to typographical errors by the *Texas Register*, the word "denied" was inadvertently added to subparagraph §3.5(b)(3)(C). It should be deleted. In §7.152(b) the first

sentence should read as follows. "The director shall develop all forms and related documents including, but not limited to, an application form, release form to obtain a credit report, and/or any other background information relating to the applicant required to determine the applicant's eligibility for a license and whether the granting of a license to the applicant will best serve the public convenience." The word "and" was misspelled "an". In §7.153(d) the word "applicant" should read "application".

The Comptroller of Public Accounts proposed new 34 TAC §9.7, which was published in the January 7, 1992, issue of the *Texas Register* (17 TexReg 105). Due to an error in the agency's submission, the word "correct" in subsection (i) should have read "incorrect". The subsection should read as follows.

"(i) In a protest by an appraisal district, the appraisal district has the burden of proving by a preponderance of the evidence in what respect the comptroller's appraisal district measures, as defined in §9.3 of this title (relating to Definitions), are incorrect."

Local Sales Tax Changes Effective April 1, 1992

The Village of Dickinson has changed its legal name to Dickinson. This name change will become effective April 1, 1992.

The City of Lake Worth has voted to join the Fort Worth MTA. The 1/2% MTA sales tax will become effective April 1, 1992 as follows: Lake Worth, City Code 2220040, Tarrant County, with a combined rate of 7 3/4%.

An additional 1/4% sales tax for improving and promoting economic and industrial development will become effective April 1, 1992, in the following city: Longview (Gregg County), City Code 2092018, new rate 1 1/4%, combined rate 8%; Longview (Harrison County), City Code 2092018, new rate 1 1/4%, combined rate 7 1/2%.

An additional 1/2% sales tax for improving and promoting economic and industrial development will become effective April 1, 1992, in the following city: Marble Falls, City Code 2027018, new rate 2.0%, combined rate 8 1/4%.

Issued in Austin, Texas, on January 23, 1992.

TRD-92101075
Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Filed: January 23, 1992

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

**Office of Consumer Credit
Commissioner**

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in Article 2.08, Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-2.08, Vernon's Texas Civil Statutes).¹

The ceiling amount in Article 3.01(1) is changed to \$9,790.

The amounts of brackets in Article 3.15(1) are changed to \$1,170 and \$9,750, respectively.

The ceiling amount in Article 3.16(6) is changed to \$390.

The amounts of the brackets in Article 6.02(9)(a) are changed to \$1,950 and \$3,900, respectively.

The amount of the bracket in Article 6.03(3) is changed to \$1,950.

The ceiling amount in Article 51.12 is changed to \$9,750.

The amounts of the brackets in Article 51.12 are changed to \$117, \$390 and \$1,170, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 1992 and extending through June 30, 1993.

¹Computation method: The Reference Base Index (the Index for December, 1967) = 101.6. The December, 1991 Index = 404.7. The percentage of change is 398%. This equates to an increase of 390% after disregarding the percentage of change in excess of multiples of 10%.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201134 Al Endsley
Commissioner
Office of Consumer Credit Commissioner

Filed: January 24, 1992

For further information, please call: (512) 479-1280



Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer⁽¹⁾/Agricultural/ Commercial⁽²⁾ thru \$250,000</u>	<u>Commercial⁽²⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	01/27/92-02/02/92	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	02/01/92-02/29/92	10.00%	10.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on January 21, 1992.

TRD-9201135 Al Endsley
Consumer Credit Commissioner

Filed: January 24, 1992

For further information, please call: (512) 479-1280



**Texas Education Agency
Notice of Public Hearings on Proposed
Amendments to the Texas State Plan
for Adult Education**

The Texas Education Agency will conduct three regional public hearings on proposed amendments to the Texas State Plan for Federal Adult Education Funding for Fiscal

Years 1990-1993 for implementation of the National Literacy Act. The proposed plan amendments are developed in compliance with the requirements of Public Law 102-73, the National Literacy Act. The hearings will be conducted at the following times and locations: Monday, February 10, 1992, 10 a.m., Region XIX Education Service Center, Room 603, 6611 Boeing Drive, El Paso, Texas 79925; Tuesday, February 11, 1992, 9 a.m., Dallas Independent School District Auditorium, 5000 South Oakland, Dallas, Texas 75215; Wednesday, February 12, 1992, 9 a.m., Region I Education Service Center, Room 4, 1900 West Schunior, Edinburg, Texas 78539.

Individuals who wish to speak at these hearings should pre-register by 4:30 p. m., on Friday, February 7, 1992, by calling (512) 463-9447.

Individuals wishing to give testimony may be limited to a three-minute presentation. Presenters will be required to

give his or her name, organizational affiliation, if any, mailing address, indicate which item or topic he or she intends to address, and supply two copies of their written testimony. Those individuals wishing to give testimony on the referenced topics who are unable to pre-register, may register on the day of the hearing, and should supply two copies of their written testimony. If time permits, these individuals will be allowed to give testimony following those who have pre-registered, on a first-come, first-served basis.

Draft copies of the amendments may be obtained by calling (512) 463-9447 or (512) 463-9294.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201186 Lionel R. Meno
Commissioner of Education

Filed: January 24, 1992

For further information, please call: (512) 463-9701

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Advisory Commission on State Emergency Communications Public Education Bid Specifications

The request is filed under the provisions of the Health and Safety Code, Chapter 771, §771.075.

Description of Services. Bid specifications call for the production and delivery of reflective decals for public safety vehicles to be used as public education for 9-1-1 emergency telephone communications.

Contact Person. To obtain bid proposal, contact Carey Spence, Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South; Suite B-100, Austin, Texas 78746; (512) 327-1911.

Closing Date. February 3, 1992.

Contractor Selection Process. Proposals will be evaluated by the Advisory Commission on State Emergency Communications and selection will be based on experience, qualifications, availability, and reasonableness of proposed cost of service in relation to the material described. Preference will be given, all other considerations being equal, to a business whose place of business is within the state or who will manage the contracted project entirely from its office within the state.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201070 Mary A. Boyd
Executive Director
Advisory Commission on State Emergency
Communications

Filed: January 22, 1992

For further information, please call: (512) 327-1911

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Texas Employment Commission Correction of Error

The Texas Employment Commission submitted a notice of Consultant Contract Amendment which appeared in the January 3, 1992, issue of the *Texas Register* (17 TexReg

67). Due to a proofreading error by the *Texas Register* there was an error in the date in the next-to-last sentence of the text. The period of service extends to January 31 (not January 3, as published).

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Texas Department of Health Correction of Errors

The Texas Department of Health adopted 25 TAC §98.67, concerning HIV and STD control, which was published in the December 17, 1991, *Texas Register* (16 TexReg 7346). The word "fifteen" was omitted from subsection (d). It should read as follows. "(d) Membership. The board shall appoint a fifteen member...".

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The Texas Department of Health proposed 25 TAC §337.252, concerning water saving performance standards, which was published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7628). In paragraph (a)(1), the word "or" was omitted. The paragraph should read as follows. "... requirements established in §337.252(b); or".

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Examination of Code Enforcement Officers Proposal Request

The Texas Department of Health has extended the deadline date for submission of proposals in response to the request for proposal entitled "Code Enforcement Officer Written Examination Development and Administration", published in the December 13, 1991, issue of the *Texas Register* on page 7259. Proposals are due no later than 5 p.m. on Friday, February 14, 1992, in the office of Dr. James J. Zukowski, Assistant Director, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6628 or (512) 834-6677 (FAX). Proposals may be delivered by mail to the above address or in person at 8407 Wall Street, S-422, Austin, Texas 78753.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201059 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 22, 1992

For further information, please call: (512) 834-6628

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Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
San Antonio	Lipitek, Inc.	L04547	San Antonio	0	01/06/92
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	0	01/07/92

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Baytown	Baytown Radiology Associates	L01904	Baytown	26	01/07/92
Bedford	Harris Methodist Hospital - HEB	L02303	Bedford	16	01/02/92
Borger	Phillips 66 Company - Philtex Plant	L03977	Borger	5	01/07/92
Dallas	Endocrine Associates of Dallas, P.A.	L02668	Dallas	14	01/02/92
Deer Park	Quantum Chemical Corporation	L00204	Deer Park	30	01/07/92
Gregory	Occidental Chemical Corporation	L04259	Ingleside	3	01/03/92
Houston	Texas Medical Imaging Center	L03439	Houston	4	01/07/92
Humble	The Nuclear Imaging Center	L03758	Humble	4	01/06/92
Throughout Texas	Tenneco Gas	L01487	Houston	21	01/02/92
Throughout Texas	Ebasco Services Incorporated	L02662	Houston	29	01/02/92
Throughout Texas	Sergent, Hauskins & Beckwith Geotechnical Engineering	L03622	El Paso	4	12/31/91
Throughout Texas	Nuclear Technologies International	L02975	Midland	28	01/03/92
Throughout Texas	Longview Inspection, Inc.	L03720	Longview	32	01/03/92
Throughout Texas	Maxim Engineers Inc.	L02653	Dallas	17	01/04/92
Throughout Texas	BIX Testing Laboratories	L02143	Baytown	46	01/03/92
Throughout Texas	Professional Service Industries, Inc.	L00203	Houston	51	01/03/92
Throughout Texas	Bonded Inspections, Inc.	L00693	Garland	40	01/07/92

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Brownfield	Brownfield Regional Medical Center	L02541	Brownfield	9	01/07/92
Seminole	Seminole Memorial Hospital	L03118	Seminole	12	01/03/92

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, Texas, from 8 a.m. to 5 p. m. Monday-Friday (except holidays).

Issued in Austin, Texas, on January 22, 1992.

TRD-9201132 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 24, 1992

For further information, please call: (512) 835-7000

Ryan White/Title II Activities Public Hearing

The Texas Department of Health will conduct a Public Hearing to receive public comments regarding the state-wide comprehensive plan as proposed in the Texas application for second year funding of Ryan White/Title II activities. The hearing will be held on February 10, 1992, at 9:30 a.m. at the Texas Department of Health Auditorium, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201058 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: January 22, 1992

For further information, please call: (512) 458-7209

Texas Department of Housing and Community Affairs

Public Notice-Emergency Shelter Grants Program

The Texas Department of Housing and Community Affairs (TDHCA) announces the imminent availability of funds under the Emergency Shelter Grants Program (ESGP). TDHCA is applying to the United States Department of Housing and Urban Development (HUD) for \$1,929,000 in ESGP funds for FY 1992. The ESGP is authorized by the Stewart B. McKinney Homeless Assistance Act of 1987 (Title IV of Public Law 100-77) as amended by Public Law 100-628.

TDHCA will award funds to local governments and private nonprofit organizations on a competitive basis for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating and support service expenses in connection with emergency shelter for the homeless, and for homeless prevention activities.

TDHCA has set a minimum grant amount of \$30,000 and a maximum amount of \$100,000 for each project. ESGP entitlement cities and counties are eligible for funding under the state program but only up to the amount that represents the difference between the applicable TDHCA maximum less their HUD allocations.

To be eligible, an applicant must be: a unit of general local government (county or incorporated city), or a private nonprofit organization providing assistance to the homeless. Nonprofit organizations must obtain a certification from the relevant unit of general local government approving the proposed project. Applicants must plan to utilize ESGP funds for eligible activities as set forth in HUD's implementing regulations (24 Code of Federal Regulations Part 576, 54 FedReg 46,794, November 7, 1989); be able to supplement (match) the ESGP grant amount with an equal amount of resources; and ensure that all of its grant amount can be obligated within 180 days after grant award from TDHCA. Environmental assessment requirements as set forth in 24 Code of Federal Regulations Part 58 apply to ESGP.

TDHCA anticipates that the request for proposal (RFP) for this program will be available in early February 1992; the proposal due date to TDHCA will be mid-March 1992; and the date for the obligation of ESGP funds will be mid-April, 1992. The RFP packet will contain a specific timetable of events and deadlines. Because of the critical deadlines HUD has placed on the obligation of ESGP funds, potential recipients should begin planning now for the possible receipt and obligation of the ESGP funds.

To request a copy of the RFP, write to: Community Services Section, Attention: Eddie Fariss, Texas Department of Housing and Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166, or call the Community Services Section at (512) 475-3950.

Issued in Austin, Texas, on January 23, 1992.

Filed: January 24, 1992

For further information, please call: (512) 475-3802

◆ ◆ ◆
General Land Office
 Correction of Error

The General Land Office proposed new 31 TAC §1.3 concerning fees, which was published in the January 3, 1992, *Texas Register*. Due to typesetting errors, text was omitted from two subitems.

In §1.3(c)(2)(C)(i)(I)(-b-)(-2-), the subitem should read as follows. "(-2-) annual fee: \$.10 per square foot for all area exceeding 300 feet in length and/or larger than 2,500 square feet in area. The greater of the two rates will be charged/\$100 minimum;".

In §1.3(c)(2)(C)(ii)(III)(-a-)(-2-), the subitem should read as follows. "(-2-) annual fee: \$.10 per square foot or fill formula, whichever is greater/\$25 minimum;".

◆ ◆ ◆
Texas Motor Vehicle Commission
 Correction of Error

The Texas Motor Vehicle Commission proposed amendments to 16 TAC §§105.1-105.3, 105.5-105.9, 105.11-105.24 and new §§105.4, 105.10, 105.25-105.27, concerning advertising. The rules were published in the December 24, 1991, issue of the *Texas Register*.

In §105.1, the word "of" should be boldface to indicate new language in the phrase "...of **commission licensees by requiring** [by licensed new motor vehicle dealers, manufacturers, and distributors, in the interest of furthering] truthful and accurate advertising practices..."

In §105.4(C), the word "price" is misspelled.

In §105.6, the word **accurate** should be boldface to indicate new language, as should the comma immediately following "clear".

In §105.11(a)(2), a semi-colon is missing: "(2) make[,; [engine size, model, and commonly accepted]".

In §105.20, "advertise" is misspelled. A bracket to indicate old language was omitted: "...to advertise [, publicize, or..."

In §105.25(5), the word "payment" was a misprint and should be deleted.

◆ ◆ ◆
Texas State Board of Pharmacy
 Correction of Error

The Texas State Board of Pharmacy adopted amendments to 22 TAC §291.91, concerning definitions, which was published in the January 14, 1992, *Texas Register* (17 TexReg 324). Due to an error in the proposed publication (16 TexReg 5052) and in the adoption submission from the agency, the word "time" was inadvertently omitted from the definition for "Indigent". The text should read as

follows.

"Indigent. Person who meets or falls below 185 percent of federal poverty income guidelines as established from time to time by the U.S. Department of Health and Human Services."

◆ ◆ ◆
Public Utility Commission of Texas
 Correction of Error

The Public Utility Commission of Texas adopted amendments to 16 TAC §23.21, concerning rates, and §23.31, concerning certification criteria. The rules were published in the January 7, 1992, issue of the *Texas Register* (17 TexReg 114).

Due to typesetting errors, the *Texas Register* omitted text from the sections.

In §23.21(d)(6)(B) the second from the last sentence should read as follows. "Such percentage shall be determined by computing the ratio of a class's or service's allocated franchise tax to its historic revenues."

In §23.31(c)(2)(D)(i) the clause should read as follows.

"(i) the alteration of an existing transmission line to provide service to a customer-owned substation or metering point, or to a utility-owned substation, where that utility-owned substation is located within two spans of the existing transmission line, provided that any neighboring utilities and landowner(s) crossed by the transmission facilities constructed to connect the substation to the existing transmission line has given prior consent;"

◆ ◆ ◆
Notice of Intent to File Pursuant to PUC
 Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Mission C.I.S.D., Mission, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Mission C.I.S.D. Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 10888.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Mission C.I.S.D. The geographic service market for this specific service is the Mission area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on January 23, 1992.

TRD-9201167 Mary Ross McDonald
 Secretary of the Commission
 Public Utility Commission of Texas

Filed: January 24, 1992

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

phases for the following TxDOT project: 92-37-043, Knox City Municipal Airport.

The engineering firm for these services is GSW and Associates, Inc., 1030 Andrews Highway, Suite 211, Midland, Texas 79701.

The total value of the contract is \$4,029 and the contract period starts on January 17, 1992 until the completion of the project.

If there are and questions, please contact Lydia Scarborough, Assistant Division Director, Division of Aviation, Texas Department of Transportation, (512) 476-9262.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201090 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 23, 1992

For further information, please call: (512) 463-8630



The following consultant contract award for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 664-4.

The request for professional engineering services was published in the *Texas Register* on September 3, 1991 (16 TexReg 4864).

The consultant proposal will be for professional engineering services for the design and construction administration phases for the following TxDOT project: 93-13-041, Post Garza County Airport.

The engineering firm for these services is Oller Engineering, Inc., P.O. Box 53423, Lubbock, Texas 79453.

The total value of the contract is \$51,072 and the contract period starts on January 17, 1992 until the completion of the project.

If there are any questions, please contact Lydia Scarborough, Assistant Division Director, Division of Aviation, Texas Department of Transportation, (512) 476-9262.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201089 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 23, 1992

For further information, please call: (512) 463-8630



The following consultant contract award for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 664-4.

The request for professional engineering services was published in the *Texas Register* on September 3, 1991 (16 TexReg 4863).

The consultant proposal will be for professional engineering services for the design and construction administration phases for the following TxDOT project: 93-19-051, Slaton Municipal Airport.

The engineering firm for these services is Parkhill, Smith and Cooper, Inc., 4010 Avenue R, Lubbock, Texas 79412.

The total value of the contract is \$70,627 and the contract period starts on January 17, 1992 until the completion of

the project.

If there are and questions, please contact Lydia Scarborough, Assistant Division Director, Division of Aviation, Texas Department of Transportation, (512) 476-9262.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201088 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 23, 1992

For further information, please call: (512) 463-8630



The following consultant contract award for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 664-4.

The request for professional engineering services was published in the *Texas Register* on September 3, 1991 (16 TexReg 4862).

The consultant proposal will be for professional engineering services for the design and construction administration phases for the following TxDOT project: 92-36-053, Jackson County Airport, Edna.

The engineering firm for these services is O'Malley Engineers, P.O. Box 1976, Brenham, Texas 77834-1976.

The total value of the contract \$21,543 and the contract period starts on January 17, 1992 until the completion of the project.

If there are any questions, please contact Lydia Scarborough, Assistant Division Director, Division of Aviation, Texas Department of Transportation, (512) 476-9262.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201087 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 23, 1992

For further information, please call: (512) 463-8630



The following consultant contract award for providing professional engineering services is filed under the provisions of Texas Civil Statutes, Article 664-4.

The request for professional engineering services was published in the *Texas Register* on September 3, 1991 (16 TexReg 4855).

The consultant proposal will be for professional engineering services for the design and construction administration phases for the following TxDOT project: 92-38-023, Quannah Municipal Airport.

The engineering firm for these services is GSW and Associates, Inc., 1030 Andrews Highway, Suite 211, Midland, Texas 79701.

The total value of the contract \$6,792 and the contract period starts on January 17, 1992 until the completion of the project.

If there are and questions, please contact Lydia Scarborough, Assistant Division Director, Division of Aviation, Texas Department of Transportation, (512) 476-9262.

Issued in Austin, Texas, on January 22, 1992.

TRD-9201086

Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 23, 1992

For further information, please call: (512) 463-8630



Request for Proposals

Pursuant to Texas Civil Statutes, Article 4413 (56), Oil Overcharge Restitutionary Act, the Texas Department of Transportation issues the following notice for solicitation of proposals and/or applications from selected non-urbanized transit providers to utilize funds available under the Consumer Education for Rural Transit Riders (Consumer Education) Program. This is a competitive grant program administered by the department for the Governor's Energy Office.

Notice of Invitation: The Texas Department of Transportation (TxDOT) in conjunction with the Governor's Energy Office is issuing this request for proposals. The United States Department of Energy approved a program submitted by the Governor's Energy Office which authorizes the use of Exxon overcharge funds for consumer education activities by selected non-urbanized transit systems. An expenditure of \$55,000 is authorized. Approximately 80% of this amount is oil overcharge money; the remaining 20% is Rural Transit Assistance Program funds provided by the U. S. Department of Transportation.

No local match is required. However, agencies are encouraged to augment their proposals with currently budgeted marketing funds, cash, or in-kind match where possible.

Each applicant's proposal must concentrate on activities that target the education of its rural residents about the services provided by the transit system. The techniques used to fulfill this goal must be consistent with the state-supported campaign, whose themeword is TRAX. Integration of the TRAX logo in local messages is required. The project period will be for 12 months.

Eligible Applicants: This grant program is open to non-urbanized transit operators whose yearly March ridership reports to TxDOT indicate that 30% or more of their ridership is composed of the general public. These agencies are: Aspermont Small Business Development Center, Aspermont; Bee Community Action Agency, Beeville; Brazos, Transit System, Bryan; Capital Area Rural Transportation System, Austin; Caprock Community Action Association, Crosbyton; City of Cleburne, Cleburne; City of Del Rio, Del Rio; City of Eagle Pass, Eagle Pass; Community Council of Southwest Texas, Uvalde; Heart of Texas Council of Governments, Waco; Laredo-Webb County Community Action Agency, Laredo; Lufkin Transit, Lufkin; Montgomery County Transit, The Woodlands; Palo

Pinto County Transportation Council, Mineral Wells; Parker County Transportation Service, Weatherford; Rolling Plains Management Corp., Crowell; Rural Economic Assistance League, Alice; San Patricio County Committee on Youth Education and Job Opportunities, Sinton; South Plains Community Action Association, Levelland; The Transit System, Glen Rose; Town of South Padre Island, South Padre Island; West Texas Opportunities, Lamesa.

Selection Criteria: As this is a competitive grant program, the TxDOT staff will recommend projects to the Texas Transportation Commission for funding, based on the following considerations: how well the overall program targets new and potential riders; completeness of the response to application requirements; effectiveness of past marketing dollars in increasing ridership; and growth trends in non-subsidized passenger trips.

Response Date: Written proposals must be received by Richard G. Christie, Director of Public Transportation, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2583, on or before March 20, 1992. FAX proposals will not be accepted.

Agency Contact: Additional information and complete application requirements may be obtained by contacting Karen Dunlap, Planner, at the previous address, or by phone at (512) 483-3663.

Issued in Austin, Texas, on January 23, 1992.

TRD-9201085 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: January 23, 1992

For further information, please call: (512) 463-8630



Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission proposed 28 TAC §160.2, concerning nonsubscribing employers' reports of injury, which was published in the January 21, 1992, *Texas Register* (17 TexReg 463). In the preamble, first paragraph, "...employers of 50 employees or more, as of January 1, 1992..." the date should read "January 1, 1993". Also in the first paragraph the line which reads "...and employers of four employees or more, as of January..." should read "...and employers with more than four employees, as of January...". In the second paragraph, "1995-0 (no notices requires);..." the word "requires" should be "required".



1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 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 February 28, November 6, December 1, and December 29. A bullet 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 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	SECOND QUARTERLY INDEX	
53 Friday, July 17	Monday, July 13	Tuesday, July 14
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70	Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71	Friday, September 18	Monday, September 14	Tuesday, September 15
72	Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73	Friday, September 25	Monday, September 21	Tuesday, September 22
74	Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75	Friday, October 2	Monday, September 28	Tuesday, September 29
76	Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77	Friday, October 9	Monday, October 5	Tuesday, October 6
	Tuesday, October 13	THIRD QUARTERLY INDEX	
78	Friday, October 16	Monday, October 12	Tuesday, October 13
79	Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80	Friday, October 23	Monday, October 19	Tuesday, October 20
81	Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82	Friday, October 30	Monday, October 26	Tuesday, October 27
83	Tuesday, November 3	Wednesday, October 28	Thursday, October 29
	Friday, November 6	NO ISSUE PUBLISHED	
84	Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85	Friday, November 13	Monday, November 9	Tuesday, November 10
*86	Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87	Friday, November 20	Monday, November 16	Tuesday, November 17
88	Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89	Friday, November 27	Monday, November 23	Tuesday, November 24
	Tuesday, December 1	NO ISSUE PUBLISHED	
90	Friday, December 4	Monday, November 30	Tuesday, December 1
91	Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92	Friday, December 11	Monday, December 7	Tuesday, December 8
93	Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94	Friday, December 18	Monday, December 14	Tuesday, December 15
95	Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96	Friday, December 25	Monday, December 21	Tuesday, December 22
	Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993)	Friday, January 1	Monday, December 28	Tuesday, December 29

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