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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal-publication date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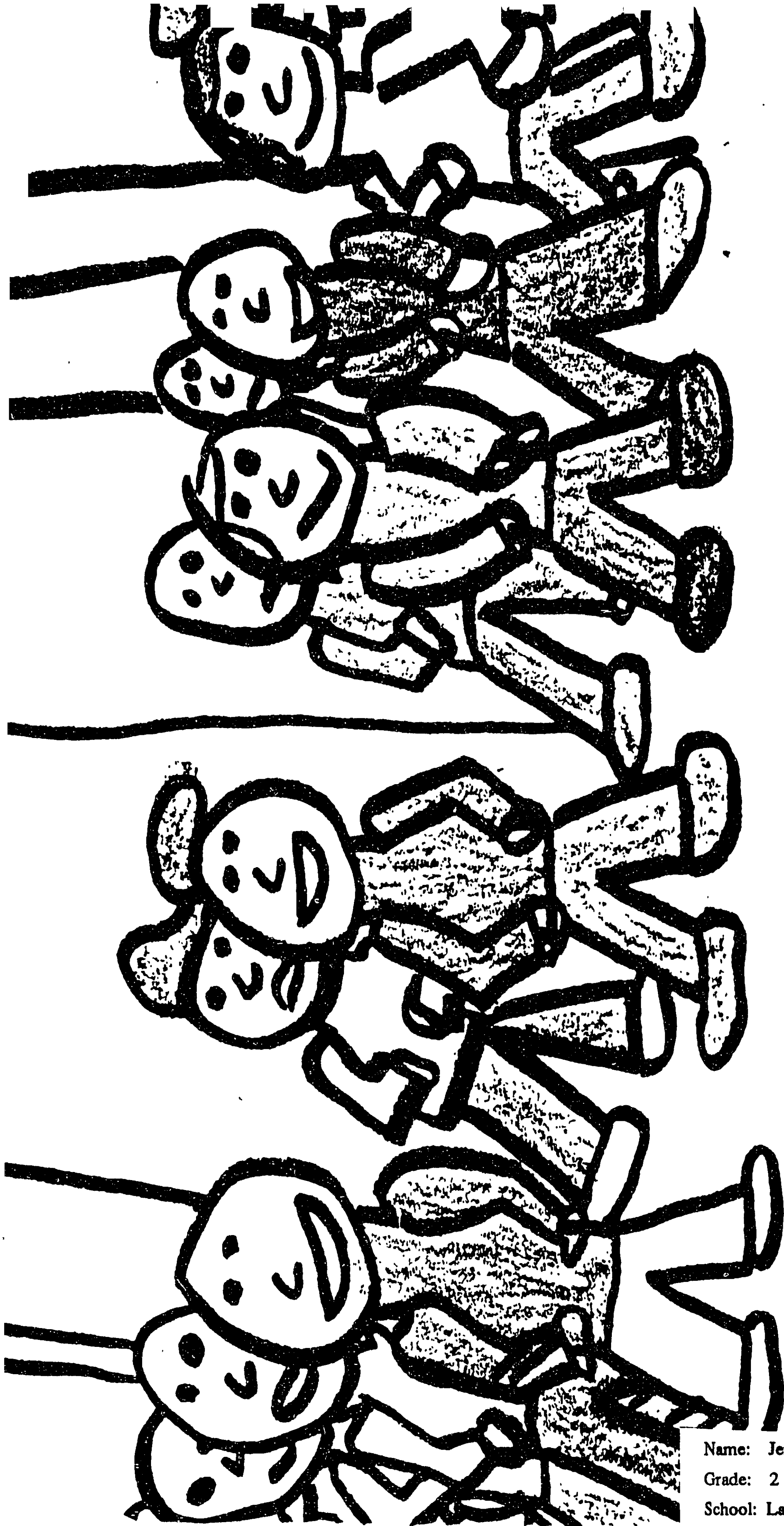
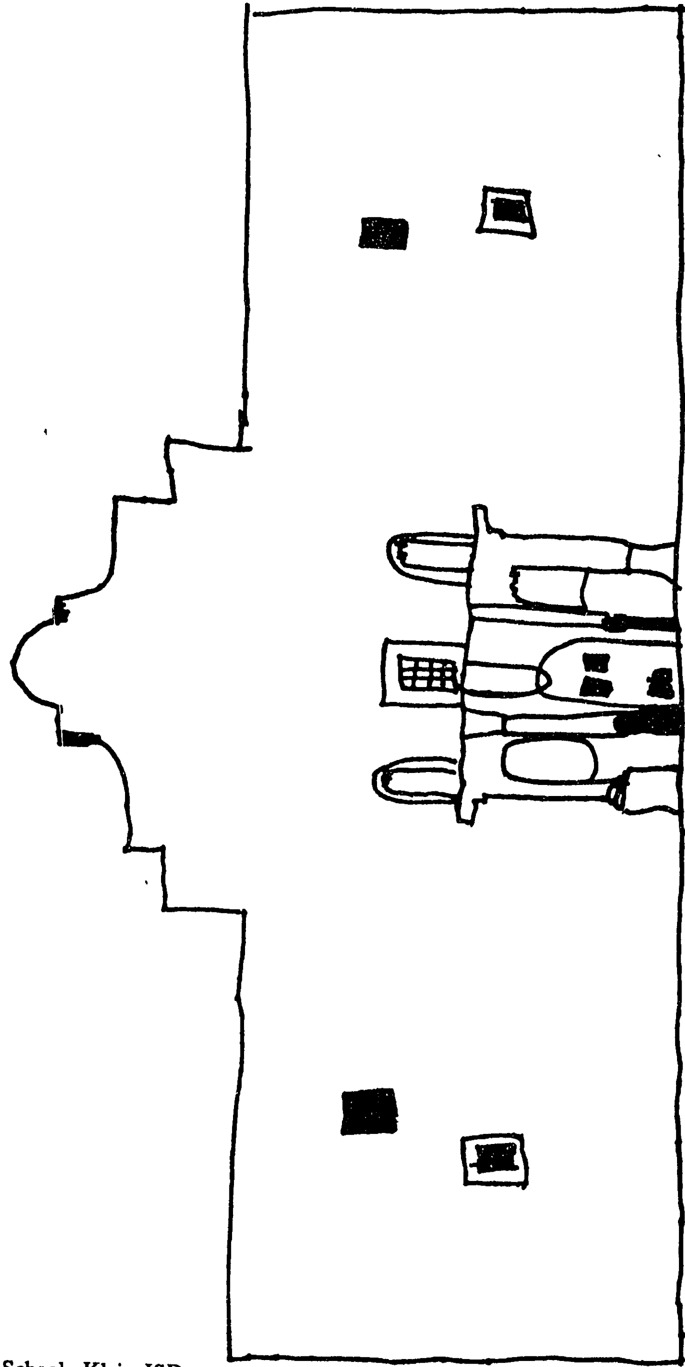


Name: Jeremy Porter

Grade: 2

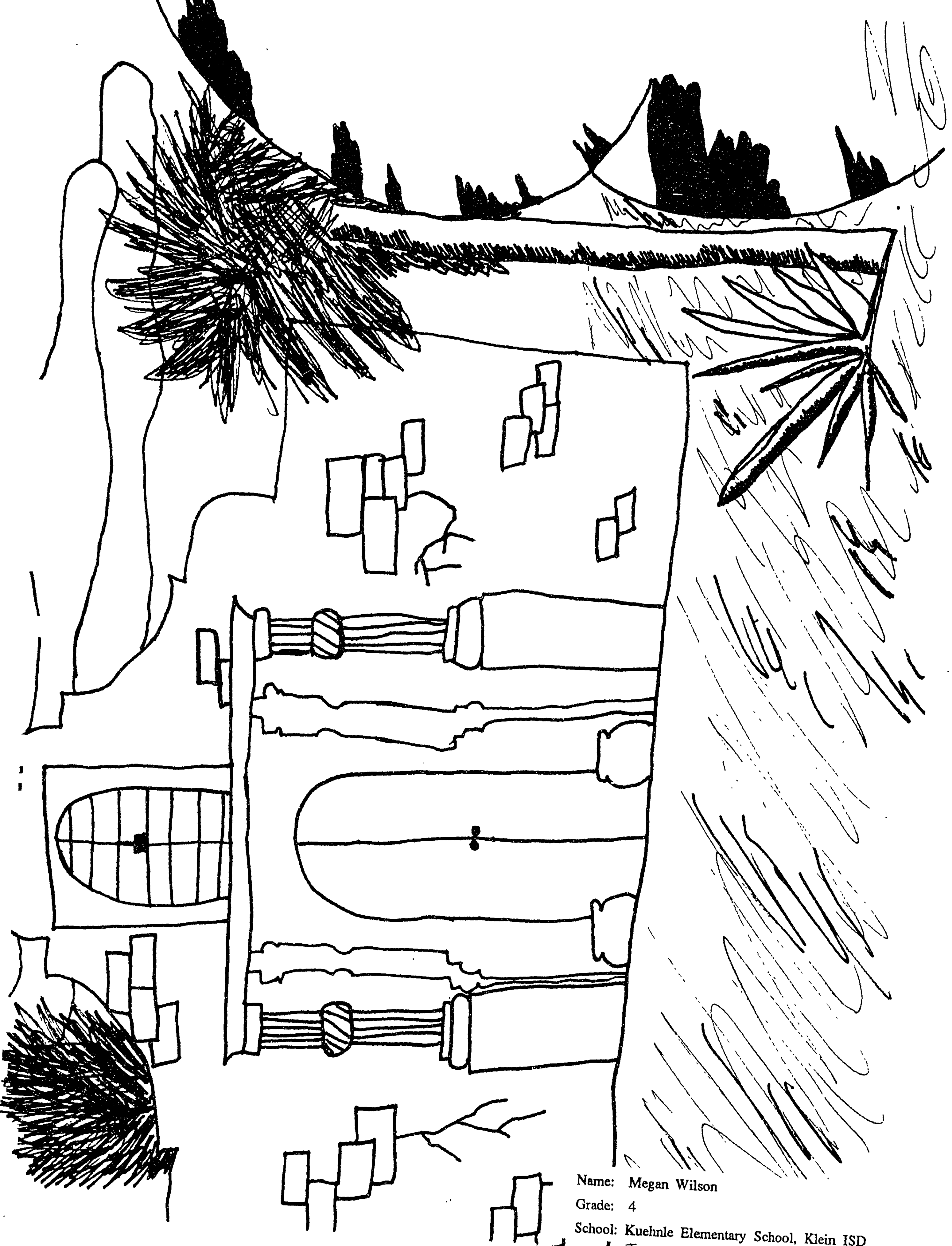
School: Lake Highlands Elementary, Richardson ISD



Name: Jeremy Copus

Grade: 4

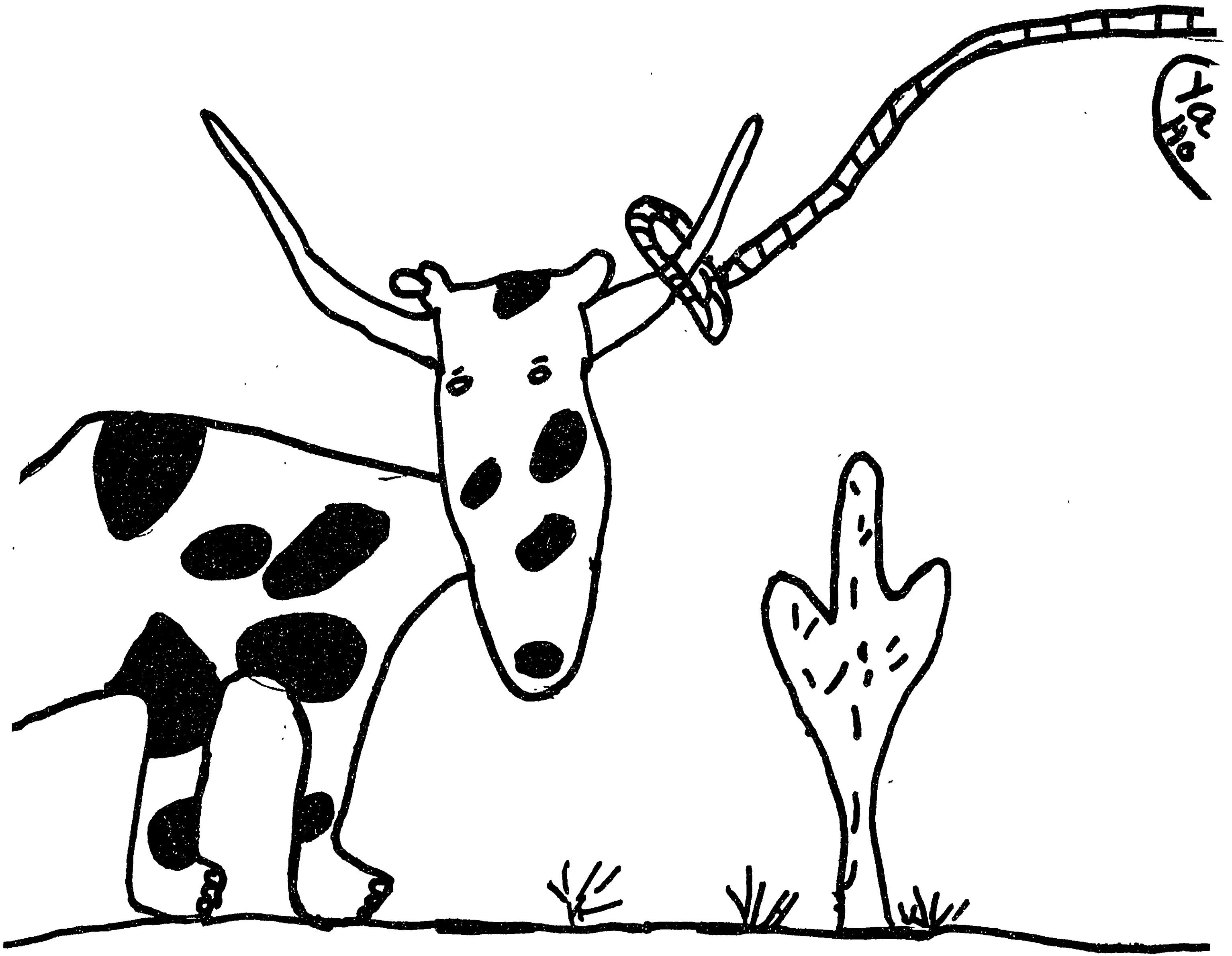
School: Kuehnle Elementary School, Klein ISD



Name: Megan Wilson

Grade: 4

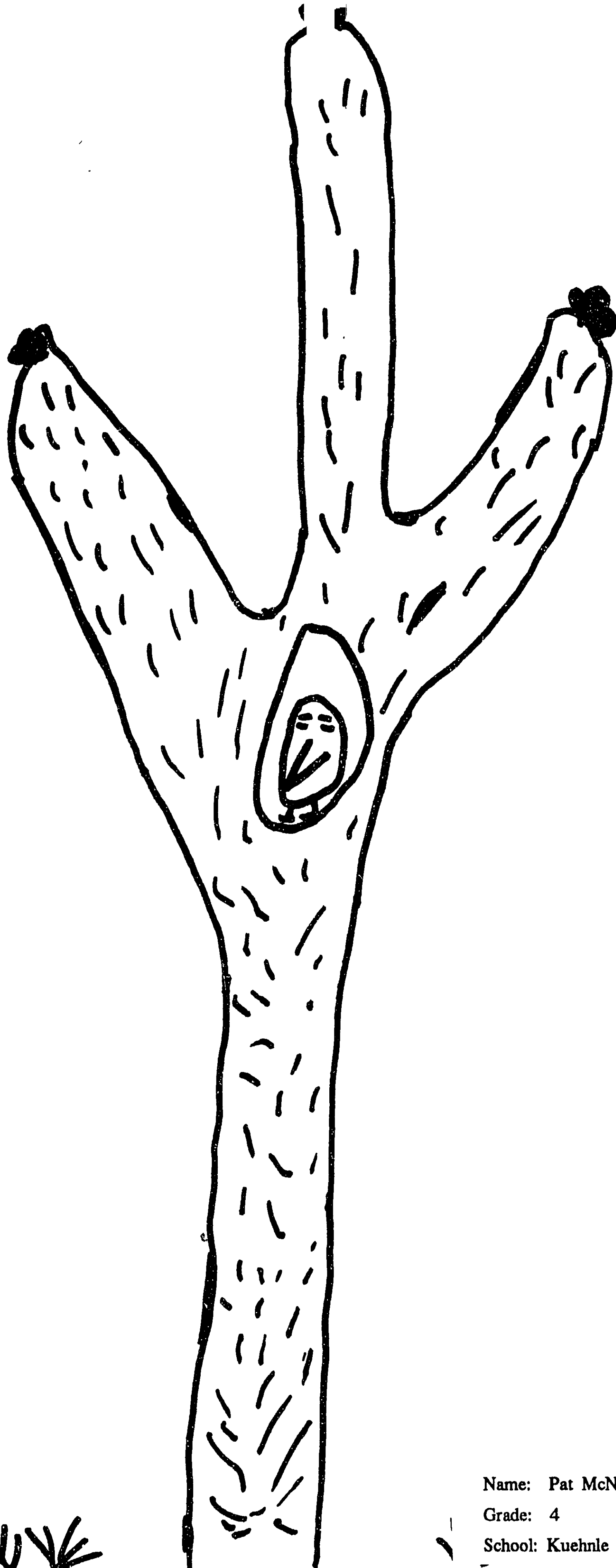
School: Kuehnle Elementary School, Klein ISD



Name: Pat McNally

Grade: 4

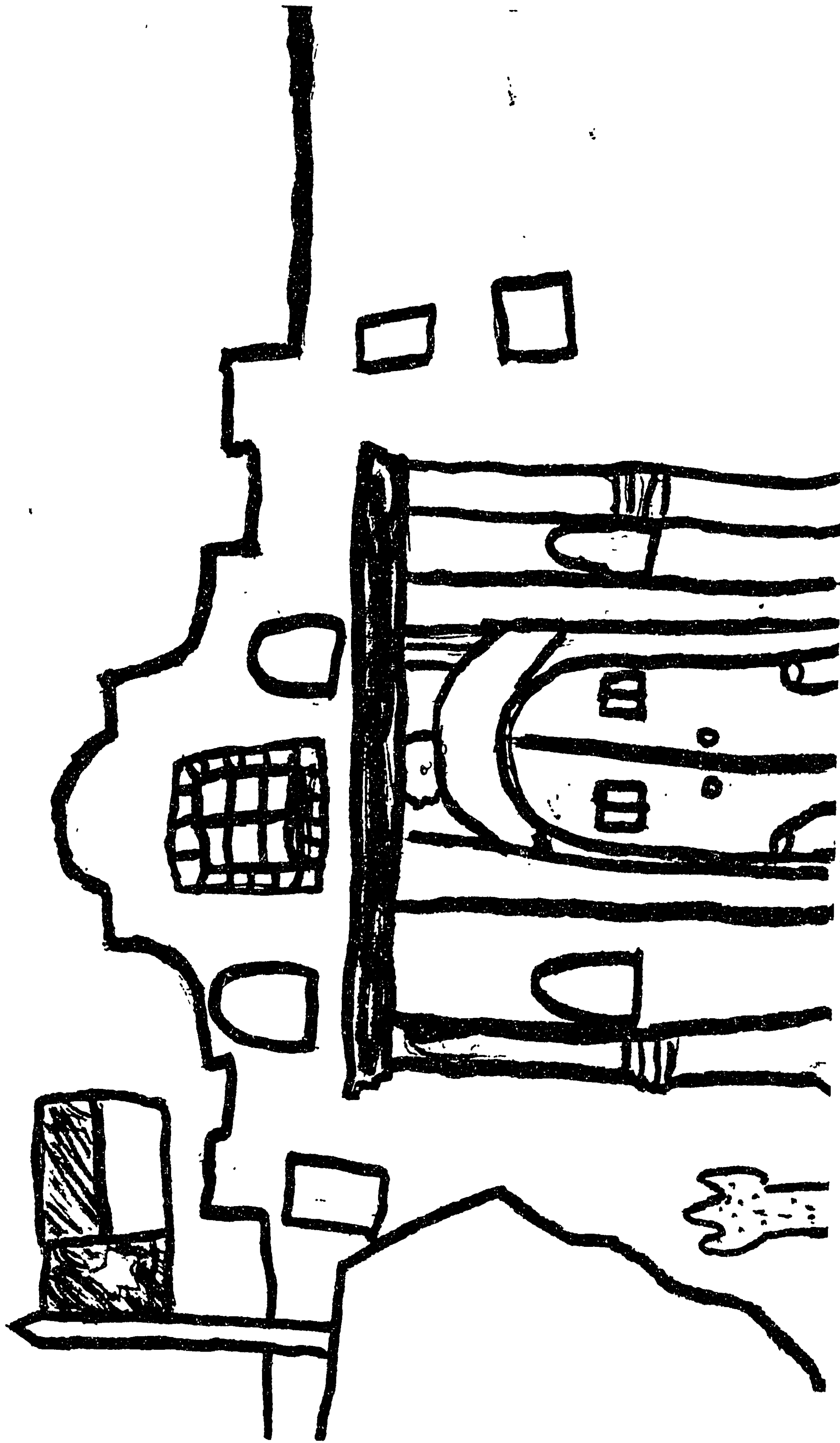
School: Kuehnle Elementary School, Klein ISD



Name: Pat McNally

Grade: 4

School: Kuehnle Elementary School, Klein ISD



Name: Rachel Castro

Grade: 4

School: Kuehnle Elementary School, Klein 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 3. Practice and Procedure

Subchapter C. Sworn Complaints

• 1 TAC §§3.111, 3.113, 3.115, 3.117, 3.119, 3.131 3.133, 3.135, 3.137

The Texas Ethics Commission adopts on an emergency basis new §§3.111, 3. 113, 3.115, 3.117, 3.119, 3.131, 3.133, 3.135, and 3.137 concerning sworn complaints. The new sections set forth the guidelines and requirements concerning the filing of a sworn complaint with the Texas Ethics Commission.

The commission has determined that adoption of these sections as soon as possible is in the public interest and is necessary in order to comply with Texas Civil Statutes, Article 6252-9d (Vernon's Supplement 1991), which governs the complaint procedure before the commission.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-9d.1, (Vernon's Supplement 1991), effective January 1, 1992, which provide the Texas Ethics Commission with the authority to promulgate all rules and regulations necessary in carrying out the provision of the Act.

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

Act–Texas Civil Statutes, Article 6252-9d.1 (Vernon's Supplement 1992).

Complainant–Any person who files a sworn complaint with the Texas Ethics Commission.

Respondent–Any person who is alleged to have committed a violation of a rule adopted by or a law administered and enforced by the Texas Ethics Commission.

§3.113. General Requirements of a Sworn Complaint. A sworn complaint must be in writing and under oath and must state on its face an allegation that, if true, constitutes a violation of a rule adopted by or a law administered and enforced by the Texas Ethics.

(1) A sworn complaint must set forth the following in simple, concise, and direct statements:

(A) the name and street or mailing address of the complainant;

(B) the name, position or title, and address, if known, of each respondent;

(C) the nature of the alleged violation, including if possible the specific rule or provision of law alleged to have been violated;

(D) a statement of facts alleged to constitute the violation and the dates or period of time in which the alleged violation occurred;

(E) all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including, if known, the location of the documents, and a list of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including, if known, the location of the documents.

(2) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is true and correct or that the complainant has good reason to believe and does believe that the violation occurred. An affidavit based on information and belief must state the source and basis of the information and belief. The complainant must swear to the facts by oath or affirmation before a notary or other authorized official.

§3.115. Availability and use of Sworn Complaint.

(a) Availability. The Texas Ethics Commission has prescribed a sworn complaint form to be used by persons filing complaints. The form is available at the Texas Ethics Commission, 1101 Camino La Costa, Austin, Texas 78752.

(b) Use of sworn complaint form. A person filing a sworn complaint should use the sworn complaint prescribed by the Texas Ethics Commission. A sworn complaint filed with the Texas Ethics Commission on a form not prescribed by the commission will be sufficient provided the sworn complaint is legible, substantially adopts the format of the prescribed form, and otherwise complies with the Act, §1.15 and the commission rules.

§3.117. Identification of the Complainant.

(a) Name. The name of the complainant is sufficient if the full first and last name and middle initial, if any, is disclosed.

(b) Address. The address of the complainant is sufficient if the home, business street, or mailing address is disclosed, provided, however, that the address must be one where certified or registered mail, restricted delivery, return receipt requested may be sent to the complainant.

§3.119. Identification of the Respondent.

(a) Name. The name of the respondent is sufficient if the full first and last name and middle initial, if any, is disclosed.

(b) Position or title. The position or title of the respondent is sufficient if the information discloses the capacity in which the respondent is alleged to have committed the violation (e.g lobbyist, candidate, officeholder) and in the event more than one person holds a similar position or title, the information further specifically identifies the particular position or title held by the respondent. In the event the respondent does not hold a title or position of if the alleged violation consists of the respondent's failure to hold a position required by law, such as failure to register as a lobbyist, the complaint is sufficient if the sworn complaint taken as a whole discloses the circumstances under which the respondent is subject to a rule adopted by or a law administered and enforced by the Texas Ethics Commission.

(c) Address. The address of the respondent must be provided, if known by the complainant.

(d) Multiple respondents. In the event the complaint names two or more respondents, identifying information required by the Act, §1.15 of the Act and these rules must be listed separately as to each respondent.

§3.131. Nature of Violation.

(a) General rule. A description of the nature of an alleged violation shall consist of a short, concise statement of the commission rule or provision of law alleged to have been violated. The complaint should, if possible, specifically identify the relevant rule or provision of law. However, a description is sufficient if the relevant rule or provision of law can reasonably be ascertained from the description and the from the statement of facts required by the Act, §1.15(b)(4) and these rules.

(b) Erroneous designation. A description of the nature of an alleged violation which erroneously designates a specific rule or provision of law is nonetheless sufficient if the correct designation can be reasonably be ascertained as provided in these rules and if the commission determines that the erroneous designation is not calculated to mislead the respondent.

§3.133. Statement of Facts.

(a) General rule. A description of the facts constituting an alleged violation must state facts which, if true, establish each element of a violation and must provide sufficient detail to reasonably place the respondent on notice of the rule or provision of law violated, of the manner and means by which the violation allegedly occurred, and to afford the respondent an opportunity to prepare a response.

(b) Dates. A description of the facts must, if possible, disclose the specific date(s) on which the alleged violation occurred. If the complainant is unable to provide specific dates, the complaint must disclose a specific period of time in which the alleged violation occurred. In either event, the statement of facts must disclose that the alleged violation occurred subsequent to December 31, 1991.

(c) Documents. The statement of facts may adopt by reference the content of documents that are attached to and made a part of the complaint. However, the statement of facts must reasonably identify those portions of the document that are relevant to the alleged violation.

§3.135. Relevant Documents or Other Material.

(a) Relevance. For purposes of this rule, a document or other material is relevant if the document or material has a tendency to make the existence of any fact that is of consequence to the alleged violation more probable or less probable than it would be without the document or other material.

(b) Documents or other material in possession of complainant. The complaint must describe or should attach duplicates of all documents or other materials that are relevant to the allegation and that are in the possession of the complainant, including duplicates of records that are in the possession of the complainant.

(c) Documents or other material not in the possession of complainant. The complaint must list all documents or other material within the knowledge of the complainant that are relevant to the allegation but are not in the possession of the complainant. The list must describe the document or material with sufficient detail to disclose its relevance. The list must also describe the location of the document if known.

§3.137. Affidavit.

(a) Form. The complaint must be verified. The form of the verification is sufficient if the complaint is based on oath or affirmation before a notary public or other person authorized by law to administer oaths.

(b) Contents of oath or affirmation. The oath or affirmation must either state that the factual allegations in the complaint are true and correct or that the allegations are based on information and belief.

(c) Basis for oath or affirmation. An oath or affirmation stating that the allegations are true and correct must be based on personal knowledge. An oath or affirmation based on information and belief may be based on personal knowledge or information gained from other sources.

(d) Oath or affirmation based on information and belief. An oath or affirmation based on information and belief must state the source and basis of the information. The complaint sufficiently identifies the source of the information if the source, in the case of an individual, is named or identified by position, and in the case of documents if the nature of the document is described. The complaint sufficiently identifies the basis of the information if the complaint states the substance of the information received. A complaint is sufficient if it is based in part on an anonymous source, provided however that additional facts are stated that independently corroborate the source.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202438 Jim Mathieson
Attorney
Texas Ethics Commission

Effective date: February 18, 1992

Expiration date: June 17, 1992

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

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 1. Internal Operations

Subchapter A. Commission Meeting Rules

- **1 TAC §§1.1, 1.3, 1.5, 1.7, 1.9, 1.11, 1.13, 1.23, 1.25, 1.27, 1.29, 1.31, 1.43, 1.45, 1.47, 1.49, 1.51, 1.71, 1.81**

The Ethics Commission proposes new §§1.1, 1.3, 1.5, 1.7, 1.9, 1.11, 1.13, 1.23, 1.25, 1.27, 1.29, 1.31, 1.43, 1.45, 1.47, 1.49, 1.51, 1.71, and 1.81 concerning the procedural rules for the conducting of meetings by the Texas Ethics Commission.

Jim Mathieson, staff attorney, 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. Mathieson, also has determined that for each year of the first five years the sections as proposed is in effect the public benefit anticipated as a result of enforcing the sections as proposed will be to assure compliance with rules and statutes concerning the conducting of open and accessible meetings of the commission. 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 sections are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the authorized actions of the Texas Ethics Commission.

§1.1. Officers of the Commission. The officers of the commission shall consist of a chairperson and a vice chairperson elected by a majority vote from the commission. The chairperson and the vice chairperson shall serve a one year term.

§1.3. Chairperson and Vice Chairperson. The chairperson of the commission or the vice chairperson, in the absence of the chairperson, shall preside at all meetings of the commission. While presiding, the chairperson shall direct the order of the meeting, appoint the subcommittees and persons to chair subcommittees, recognize persons to be heard at hearings, set time limits, and take other actions to clarify issues and preserve order.

§1.5. Executive Director. The executive director shall attend commission meetings at the pleasure of the commission and serve as liaison between the commission and the public.

§1.7. General Counsel. The general counsel shall attend commission meetings at the pleasure of the commission and provide legal advice to the commission and executive director and perform any duties delegated by the executive director.

§1.9. Meetings, Application of the Open Meetings Act, the Open Records Act, Opportunities to Appear, and Access.

(a) The commission shall meet at least once quarterly and at other times at the call of the chairperson. All meetings shall be conducted in accordance with Texas Civil Statutes, Article 6252-17, (Vernon's Supplement 1991), the Texas Open Meetings Act, and Texas Civil Statutes, Article 6252-9d.1, the statute governing the Texas Ethics Commission.

(b) The Open Meetings Act does not apply to the processing, preliminary review, informal hearing, or resolution of sworn complaints or motions. In addition, the Open Records Act does not apply to documents or any additional evidence relating to the processing, preliminary review, informal hearing, or resolution of sworn complaints or motions.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity appear before the commission and to speak on issues under the general jurisdiction of the commission.

(d) The commission shall prepare and maintain a written plan that describes how a person who does not speak English, or who has a physical, mental, or developmental handicap may be provided with reasonable access to commission proceedings.

§1.11. Called Meetings. In the event of a called meeting, the executive director shall notify all commissioners of the meeting a reasonable amount of time in advance by mailing them a notice of called meeting. Commissioners may add items to the agenda by following the same procedure for placing matters on the agenda as set forth for regular meetings.

§1.13. Transcripts and Minutes.

(a) All official acts of the commission which are subject to the Open Records Act shall be evidenced by written record. Such proceedings shall also be electronically recorded. The executive director may arrange for a reporter or designate a person to prepare minutes reflecting all actions taken by the commissioners present. Summaries of the electronic records may serve as minutes. Such writings shall be open to the public in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, (Vernon's Supplement 1991).

(b) Official action of the commission shall not be bound or prejudiced by any informal statement or opinion made by a commissioner or employees of the commission.

§1.23. Agenda. The agenda shall consist of agenda items prepared by staff prior to commission meetings and hearings. Notice of all items to be considered shall be filed with the secretary of state's office as required by statute.

§1.25. Conduct and Decorum. Conduct and decorum shall be maintained and enforced by the presiding officer. Every party, witness, attorney, or other representative shall comport themselves in all proceedings with proper dignity, courtesy, and respect for the commission and all other parties. Attorneys and other representatives of parties shall observe high standards of ethical behavior.

§1.27. Registration Form. The executive director shall provide registration forms for commission meeting and hearings. Any per-

son desiring to comment on any agenda item must complete a registration form.

§1.29. Quorum. Five commissioners must be present in order to have a quorum for a commission meeting.

§1.31. Request for Action by the Commission. Any person who desires to have a matter placed on the agenda for action by the commission shall make such request in writing directed to the executive director at least 15 days prior to the date set for the regular meeting of the commission. In matters other than contested cases, the applicant shall provide along with the request in writing 10 copies of all information, data, or other material which the person desires the commission to consider. In the event it is not possible to make a written request 15 days in advance of the scheduled meeting, a written request may be made to the executive director or chairperson requesting emergency action by the commission.

§1.43. Placing Matters on the Agenda.

(a) At the request of any two commissioners, the executive director shall place an item(s) on the agenda if it complies with the posting requirements specified by law. If only one commissioner submits either an oral or written request to place an item(s) on the agenda, the chairperson shall review that request and make a determination whether to place that item on the agenda for the commission's consideration.

(b) The chairperson or executive director shall determine, after receiving a written request for action by a member of the general public, whether the matter shall be heard at the time requested, having due regard for the nature and complexity of the matter to be presented.

(c) In no event shall any requested matter be placed on the agenda of the commission for its regular meeting at a time later than 10 days prior to the date on which such meeting is scheduled unless the chairperson, or vice chairperson in the event of the inability of the chairperson to act, acting on the advice of the executive director, determines that an unforeseeable emergency situation exists requiring immediate action by the commission.

(d) A notice shall be submitted stating why an emergency exists requiring the commission to act and the nature of the emergency.

§1.45. Public Hearing. A public hearing shall be conducted if required by law or requested by a commissioner. The preliminary review and the informal hearings process mandated by Texas Civil Statutes, Article 6252-9d are not subject to the Open Meetings Act, nor the Open Records Act and are not open to the public.

§1.47. Submission to the Commission without Prior Public Hearing. If a matter which is not a contested case within the meaning of the Administration Procedure and Texas Register Act, §3(2), is brought before the commission without prior public hearing, and if the notice of the matter has been posted according to the Texas Open Meetings Act, the commission may:

(1) hear and decide the matter with such time limitations on oral presentations as the commission deems necessary; or

(2) continue the matter for further hearing before the commission.

§1.49. Public Appearance.

(a) Any person wishing to speak, testify, or offer evidence before the commission shall begin by stating his or her name and the name of any person or entity represented, if any. The person shall state his or her position in respect to the issue briefly and concisely. The person's statement shall be supported by such facts as will assist the commission in arriving at a decision concerning the matter under consideration. Statistics or facts submitted to the commission shall be written, typed, or printed. Briefs submitted shall be subject to any procedural restrictions imposed by the commission.

(b) Any testimony presented by a member of the public must be taken by the commission under oath. Arguments not readily deducible from facts before the commission, or which merely criticize persons shall be avoided.

(c) Persons appearing before the commission are subject to examination by commissioners and/or by the staff of the commission.

§1.51. Order of Commission Meetings.

(a) The chairperson shall call the meeting to order.

(b) The chairperson shall request the executive director, or a person designated by the executive director to call the roll.

(c) The commission shall consider the adoption of the minutes from the previous meeting.

(d) After approval of the minutes from the last meeting, the chairperson shall open the floor to the commissioners for comments. After the commissioners have made their comments, the chairperson shall open the floor for comments or reports by the executive director.

(e) Following comments from the commissioners and the executive director, the chairperson shall swear in persons wishing to address the commission. Those persons shall address the commission under the topic of "Public Comment Session."

(f) Following the public comment session, the chairperson shall direct the executive director to present the first item on the agenda.

(g) The executive director may present the agenda item or have a staff member make the presentation.

(h) Before a vote is taken on any item, the chairperson may open the floor for discussion.

(i) If the floor is open for discussion, the chairperson shall recognize persons wishing to speak or testify in a manner allowing equal opportunity for representation on all sides of an issue, and shall regulate the order for the discussion of items.

(j) Upon completion of presentations and public comments, if any, the commission upon motion of one of the commissioners, shall take action necessary to dispose of the item.

§1.71. Voting at Commission Meetings.

(a) The commission, by record vote of six commissioners, shall adopt rules to administer laws under its jurisdiction.

(b) The commission, by record vote of five commissioners, may take action on other matters requiring a vote of the commission.

§1.81. Appeal of a Ruling from the Chair. The presiding officer, the chairperson or the vice chairperson in the absence of the chairperson, has the authority and duty to make necessary rulings on questions of parliamentary law. However, any commissioner has the right to appeal from the decision by the chairperson on such a question. The question shall then be removed from the chairperson and vested in the commission for final decision after a motion has been made, seconded, and a majority of the commissioners present have voted in the affirmative.

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 February 18, 1992.

TRD-9202437 Jim Mathieson
Attorney
Texas Ethics Commission

Earliest possible date of adoption: March 27, 1992

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

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Chapter 3. Practice and Procedure

Subchapter C. Sworn Complaints

• 1 TAC §§3.111, 3.113, 3.115, 3.117, 3.119, 3.131, 3,133, 3. 135, 3.137

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

The Texas Ethics Commission proposes new §§3.111, 3.113, 3.115, 3.117, 3. 119, 3.131, 3.133, 3.135, and 3.137 concerning the filing of sworn complaints. The new sections set forth the rules and procedures concerning the filing of sworn complaints before the Texas Ethics Commission.

Jim Mathieson, staff attorney, 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. Mathieson, also has determined that for each year of the first five years the sections as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be to inform the public of the proper rules and procedures concerning the filing of sworn complaints. 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 sections are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate rules concerning the filing of sworn complaints.

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 February 18, 1992.

TRD-9202439 Jim Mathieson
Attorney
Texas Ethics Commission

Earliest possible date of adoption: March 27, 1992

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

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

• 4 TAC §28.8

The board of directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture proposes an amendment of §28.8, concerning filing requirements and consideration and approval of applications filed under the Texas Agricultural Finance Authority Loan Guaranty Program. The amendment is proposed to place the final approval of loan applicants with the full TAFA board; to clarify procedures for notification of approval and/or denial of an application; and to establish procedures for appeal of a denial of an application

Robert Kennedy, director for agricultural 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.

Mr. Kennedy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of procedures for members of the public wishing to utilize the TAFA loan guaranty program and increased board participation in the loan guaranty approval process. 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 Robert Kennedy, 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 proposed amendment in the *Texas Register.*

The amendment is proposed under the Texas Agriculture Code Annotated, §58. 023, which provides the TAFA board of directors with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFA Loan Guaranty Program; and §58.022, which provides the board with the authority to adopt rules and procedures for administration of the TAFA Loan Guaranty Program.

§28.8. Filing Requirements and Consideration of Applications.

(a) (No change.)

(b) Submission of application. All applicants are required to obtain a preliminary commitment from a lender before applications will be accepted by the Texas Agricultural Finance Authority (Authority) for credit review. **Staff** [Authority staff] will be available prior to submission of the application to assist applicants in identifying lenders and determining **project** [program] eligibility.

(c) Staff review. **Staff** [The Authority's staff] reviews the application for completeness and notifies the applicant of any additional information required. When all required information has been received, [authority] staff will conduct a credit review, evaluate the technical and market feasibility of the project, and examine the benefits of the project for Texas agriculture and economic growth in the state.

(d) Credit Review Committee. **Staff** [The authority's staff] will submit a report on each application to the Credit Review Committee [, chaired by the commissioner or his designee and consisting of department staff and outside advisors as determined by the commissioner]. The Credit Review committee will recommend approval or disapproval **of each application** to the **board** [commissioner] ; recommendations for approval require an affirmative vote of all members of the Credit Review Committee present and voting. The Credit Review Committee may, in its discretion recommend the imposition of conditions and requirements in connection with approval of an application.

[(e) Action by commissioner. The commissioner is delegated authority by the board to act on behalf of the Authority to approve or disapprove each application.]

(e)[(f)] Notification of approval. Upon conditional approval of the application **by the board**, the Authority will notify the lender **and the applicant** in writing identifying the terms and conditions of the loan guaranty. **The board may set certain time limits regarding the acceptance of loan commitments by the applicant and lender and time limits regarding the closing of loans by the applicant and lender; however, in no event shall the time period exceed 90 days unless approved by the board.** The lender **will prepare** [prepares] the written agreements and documents necessary to close the loan guaranty in accordance with the terms and conditions set forth in the notice of conditional approval. The Authority will send the lender **and the applicant** final notice of guaranty approval after review of the closing documents. The lender **will disburse** [disburses] the loan according to the terms of the note **or loan agreement.**

(f) [(g)] Denial of application. If the application is **denied by the board** [disapproved], the Authority will notify the applicant **and the lender** in writing identifying the reasons for denial. **In the event of a denial, the applicant may petition the board for review of the denial by filing a written request with the official of the department designated by the commissioner of agriculture as being responsible**

for the department's agricultural finance programs within 30 days after the date of the denial. An appeal must address the reasons for denial and, if applicable, set forth any cure of the reasons for denial. The board may grant or deny the appeal at any time and take such further action as the board deems appropriate. The board's review on appeal is limited to a review of the reasons for denial as stated in the notification letter of denial to the applicant. [The applicant will, in most cases, be given 30 days to cure the reasons for denial.]

(g)[(h)] Reporting to the board. **Staff** [The commissioner] shall report to the board at each board meeting the status of loans and current financial commitment of the Authority.

(h)[(i)] Providing false information. An applicant who knowingly provides false information in an application is liable to the **Authority** [state and any lender involved] for any expense incurred by the **Authority** [state or lender] that would not have been incurred if the applicant had not provided the false information.

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 February 18, 1992.

TRD-9202423 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Earliest possible date of adoption: March 27, 1992

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

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §9.9

The Texas Department of Housing and Community Affairs (the department) proposes new §9.9 concerning the allocation of program funds under the Texas Community Development Program. The proposed section establishes the standards and procedures by which the department allocates Colonia funds to eligible cities and counties. The proposed section includes application requirements, selection procedures, and scoring criteria.

Ruth Cedillo, director of the Community Development Block Grant (CDBG) 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. Cedillo 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 equitable allocation of Colonia funds to eligible cities and counties. 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 Anne O. Paddock, Assistant General Counsel, P.O. Box 12026, Austin, Texas 78711, within 30 days of the date of this publication.

The new section is proposed under Texas Civil Statutes, Article 4413(501), §2.07, which provide the department with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

§9.9. Colonia Fund.

(a) General provisions. This fund is limited to water and sewer improvements projects to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is designated as such by the department; is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence and generally recognized as a colonia prior to November 28, 1990. For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund. In addition to the threshold requirements of §9.1(h) and the requirements of §9. 1(n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) Funding cycle. This fund is allocated on an annual basis to eligible county applicants on a competitive basis. Applications for funding must be received by the department by 5 p.m. on April 27, 1992.

(c) Marginal applicants. If the distribution of funds to the highest ranked applications does not completely allocate all of the colonia funds and the remainder is insufficient to fund the next-ranked application, the department works with the marginal applicant to determine whether partia funding is feasible. If the marginal amount available is equal to or above the grant minimum of $50,000, the marginal applicant may scale down the scope of the original project design and accept the marginal amount, if the reduced project is still feasible. In the event that the marginal amount remaining in the colonia fund competition is less than $50,000, the remaining funds become deobligated money and are distributed according to the 1991 Final Statement.

(d) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for funding under the colonia fund. Copies of the application must be provided to the applicant's regional review committee and the department.

(2) Upon receipt of an application, the department staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the department prior to scoring of the applications.

(4) The department then scores the applications to determine colonia fund rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) The funding recommendations are then provided to the executive director of the department.

(6) The executive director of the department reviews the final Texas recommendations for project awards and announces the contract awards.

(7) Upon announcement of contract awards, the department staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the department may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(e) Selection criteria. The following is an outline of the selection criteria used by the department for scoring applications under the colonia fund. Four hundred ten points are available.

(1) Community distress (total-60 points). All community distress scores are based on the population of the applicant and the census geographic areas where project activities are located. An applicant that has 125% or more of the average of all applicants of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants on a factor receives a proportionate share of the maximum number of points available for that factor. An applicant that has 75% or less of the average of all applicants on the per capita income factor receives the maximum number of points available for that factor:

(A) percentage of persons living in poverty-20;

(B) Per capita income-20;

(C) Percentage of housing units without plumbing-20.

(2) Benefit to low and moderate income persons (total-50 points). To determine the percentage of Texas Community Development Program funds Texas benefitting low to moderate income persons the total amount of Texas Community Development Program funds requested is divided by the number equal to the percentage of low to moderate income persons benefitting from the proposed project multiplied by the amount of Texas Community Development Program funds requested for construction. Points are awarded based on the percentage of Texas Community Development Program funds benefitting low to moderate income persons in accordance with the following scale:

(A) 100% to 90% of funds benefitting low to moderate income persons-50;

(B) 89.99% to 80% of funds benefitting low to moderate income persons-40;

(C) 79.99% to 70% of funds benefitting low to moderate income persons-25;

(D) 69.99% to 60% of funds benefitting low to moderate income persons-10;

(E) Below 60% of funds benefitting low to moderate income persons-0;

(3) Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (total-25 points). In the event less than 5.0% of the applicant's population base is composed of minority residents or the applicant has less than five permanent full-time employees, the applicant will be assigned the average score on this factor for all applicants under this fund or the, score calculated on its actual figures, whichever is higher. The terms used in this paragraph are further defined in the most recent application for this fund.

(4) Match-60 Points (Maximum) An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. The terms used in this paragraph are further defined in the most recent application package for this fund.

(A) For colonia projects with beneficiaries equal to or less than 750:

(i) Match equal to or greater than 5.0% of grant request-60;

(ii) Match at least 4.0% but less than 5.0% of grant request-40;

(iii) Match at least 3.0% but less than 4.0% of grant request-20;

(iv) Match at least 2.0% but less than 3.0% of grant request-10;

(v) Match less than 2.0% of grant request-0.

(B) For colonia projects with beneficiaries equal to or less than 1,500 but over 750:

(i) Match equal to or greater than 10% of grant request-60;

(ii) Match at least 7.5% but less than 10% of grant request-40;

(iii) Match at least 5% but less than 7.5% of grant request-20;

(iv) Match at least 2.5% but less than 5.0% of grant request-10;

(v) Match less than 2.5% of grant request-0.

(C) For colonia projects with beneficiaries equal to or less than 5,000 but over 1,500:

(i) Match equal to or greater than 15% of grant request-60;

(ii) Match at least 11.5% but less than 15% of grant request-40;

(iii) Match at least 7.5% but less than 11.5% of grant request-20;

(iv) Match at least 3.5% but less than 7.5% of grant request-10;

(v) Match less than 3.5% of grant request-0.

(D) For colonia projects with beneficiaries over 5,000:

(i) Match equal to or greater than 20% of grant request-60;

(ii) Match at least 15% but less than 20% of grant request-40;

(iii) Match at least 10% but less than 15% of grant request-20;

(iv) Match at least 5.0% but less than 10% of grant request-10;

(v) Match less than 5.0% of grant request-O.

(5) Project impact (total-215 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A project that addresses the provision of first time water or sewer service is scored higher than a project addressing other water and sewer activities. Each application is scored by a committee composed of Texas Community Development Program staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) and how the proposed project resolves the identified need;

(B) the Texas Community Development Program cost per low to moderate income beneficiary;

(C) whether the applicant has adopted and enforced subdivision regulations or a subdivision ordinance;

(D) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(E) the ability of the applicant to utilize the grant funds in a timely manner;

(F) the availability of grant funds to the applicant for project financing from other sources;

(G) the applicant's past use of Community Development Block Grant or Texas Community Development Program funds over each of the past three years and

the applicant's Community Needs Assessments or Final Statements, if applicable, for Community Block Grant or Texas Community Development Program applications during each of the past three years;

(H) the applicant's past performance on prior Texas Community Development Program contracts.

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 February 19, 1992.

TRD-9202480 Anne O. Paddock
Assistant General Counsel
Texas Department of Housing and Community Affairs

Earliest possible date of adoption: March 27, 1992

For further information, please call: (512) 320-9539

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rate Design

• 16 TAC §23.23

The Public Utility Commission of Texas proposes an amendment to §23.23 adding subsection (d), concerning rate design for telephone local exchange companies. The proposed amendment states the applicability of the subsection and defines words and terms used in the subsection. Paragraph (3) of the new subsection states the general requirements for a local exchange company's tariff for access services. Paragraph (4) of the new subsection establishes the structure for the rates charged by local exchange companies for access services. Paragraph (5) of the new subsection addresses the interexchange carrier access charge transition. Paragraph (6) of the new subsection establishes procedures for an initial compliance filing by local exchange companies. Paragraph (7) of the new subsection details various administrative provisions which must be contained in each local exchange company's access services tariff.

Martin Wilson, deputy 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. Wilson 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 greater uniformity in the structure and level of access rates charged by various local exchange companies in the state. By specifying the structure for rates for access services, the amendment will simplify the rate design process in ratemaking hearings conducted by the commission, resulting in a savings of time and rate case expenses for all parties in such hearings. The amendment will also enhance competition in the interexchange telecommunications industry by providing more uniformity in tariff provisions and less disparity in access rates charged by local exchange companies to their access customers.

The proposed amendment would cap the local exchange company's terminating carrier common line switched access rate element and eliminate the interexchange carrier access charge rate element. The amendment is proposed as part of a project which also includes an amendment to §23.53(d) of this title (relating to high cost assistance fund) to create a high cost assistance program for local exchange companies. There will be no effect on small businesses. If the amendment to this section and §23.53(d) are both adopted by the commission, there are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

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

Comments on the proposed amendment (13 copies) may be submitted in writing to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, until March 9, 1992. Replies to comments may be submitted in writing to the previously referenced address by March 16, 1992. The commission specifically invites comments on the legality of limiting the scope of the proceeding where a rate change is requested. All comments should refer to Project Number 9942.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §18, which grant the commission the authority to adopt rules to protect the public interest and to provide equal opportunity in a competitive telecommunications market place.

§23.23. Rate Design.

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

(d) Telephone.

(1) General. Local exchange company (LEC) rates for intrastate access services shall be established in accordance with the provisions of this subsection. Nothing in this subsection precludes an LEC from offering new experimental promotional or competitive services in accordance with other provisions of this part authorizing such offerings.

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

(A) Access customer-Any user of services which are obtained from an LEC access service tariff. An LEC is not an access customer of itself for intraLATA calls.

(B) Access services-LEC services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally but not limited to, interexchange services.

(C) Equal access-LEC access which is provided to access customers on a tariffed basis, which is equal in type, quality, and price to Feature Group C, and for which the rates are unbundled. From an end user's perspective, equal access is characterized by the availability of 1-plus dialing with the end user's interexchange carrier of choice on interLATA calls.

(D) High cost assistance (HCA)-A program administered by the commission in accordance with the provisions of §23.53(d) of this title (relating to Universal Service Fund).

(E) Interexchange carrier (IXC)-A carrier other than an LEC providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. An entity is not an IXC solely because of:

***(i)* the furnishing, or furnishing and maintenance of a private system;**

***(ii)* the manufacture, distribution, installation, or maintenance of customer premises equipment:**

***(iii)* the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or**

***(iv)* the provision of shared tenant service.**

(F) Interexchange carrier access charge (ICAC)-A usage-sensitive rate that is usually assessed in conjunction with switched access usage. The revenues from the assessment of the ICAC are pooled and distributed to LECs pursuant to commission order. The

ICAC is to be phased down and eliminated pursuant to the provisions of this subsection. During the phasedown the ICAC will be referred to as the transitional ICAC.

(G) Intrastate-Refers to communications which both originate and terminate within Texas state boundaries.

(H) Meet point-A point used to determine the division of billed revenues between LECs participating in the joint provision of access services that are rated on a distance-sensitive basis.

(I) Percent interstate usage PIU)-An access customer-specific ratio or ratios determined bv dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the LEC unless the LEC's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by LECs between the interstate and intrastate jurisdictions.

(J) Switched access-Access service that is provided by LECs to access customers and that requires the use of LEC network switching facilities generally, but not necessarily for the origination or termination of interexchange calls.

(K) Switched access demand-Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element normalized for out of period billings. For the purposes of this section switched access demand shall include minutes of use billed for the carrier common line (CCL) rate element.

(L) Switched access minutes or access minutes of use-The measured or assumed duration of time that LEC network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.

(M) Transitional ICAC pool-A pool of revenues administered in accordance with the provisions of paragraph (5) of this subsection.

(3) Access services. Each LEC's tariff must include the recurring and nonrecurring charges for all access services offered by the LEC. An LEC is not required to include in its access tariff any access service that its network is technologically incapable of providing. An LEC must include in its access tariff any access service which is provided on a special assembly basis if the service is provided to more than three customers or to more than three locations. LECs are prohibited from charging intrastate end user common line charges, intrastate subscriber line charges, or similar intrastate end user charges.

(4) Access rates. The structure and rates for all LECs' intrastate switched access services shall be established in accordance with the following requirements.

(A) Originating rate. Each LEC's composite originating switched access rate, excluding the transitional ICAC rate shall be no greater than $.0461 per premium originating access minute of use. For purposes of calculating the composite originating switched access rate each LEC shall incorporate its weighted average local transport rate and an effective per minute rate for all recurring rate elements. The requirements of this subparagraph apply to Southwestern Bell Telephone Company effective December 14, 1993, unless otherwise ordered by the commission.

(B) Terminating rate. Each LEC's composite terminating switched access rate, excluding terminating CCL and the transitional ICAC rate, shall be no greater than $.0183 per premium terminating access minute of use. For purposes of calculating the composite terminating switched access rate each LEC shall incorporate its weighted average local transport rate and an effective per minute rate for all recurring rate elements. The requirements of this subparagraph applv to Southwestern Bell Telephone Company effective December 14, 1993, unless otherwise ordered by the commission.

(C) Terminating CCL. In the initial compliance filing, each LEC's terminating CCL may be residually priced to produce the equivalent amount of revenues defined by paragraph (5)(A)(i) of this subsection, except that the terminating CCL rate shall not exceed $.08 per premium terminating rated access minute of use in the initial filing nor in any subsequent filing.

(D) Premium access rates shall apply only to those switched access minutes that:

(i) terminate via Feature Group B, provided, however, any existing discounts for termination via Feature Group B shall be phased out in accordance with the schedule for the phase down of the transitional ICAC revenue requirement as set forth in paragraph (5)(B) of this subsection;

(ii) originate or terminate via Feature Group C;

(iii) originate from an equal access end office via any switched access feature group; or

(iv) terminate to an equal access end office via any switched access feature group: or

(v) originate from a non-equal access end office and are routed over Feature Group D tandem connections. The requirements of this subparagraph apply to Southwestern Bell Telephone Company effective December 14, 1994, unless otherwise ordered by the commission.

(E) Local switching. The rate differential between the LS1 and LS2 local switching rate elements shall be phased into one premium local switching rate element in accordance with the schedule for the phase down of the transitional ICAC revenue requirement as set forth in paragraph (5)(B) of this subsection. The requirements of this subparagraph apply to Southwestern Bell Telephone Company effective December 14, 1994, unless otherwise ordered by the commission.

(F) Local transport. Local transport rates shall not contain unreasonable distance sensitivity.

(G) ICAC. The ICAC rate shall be phased down and eliminated by January 1, 1995 in accordance with paragraph (5) of this subsection.

(H) Lower rates. Nothing in this paragraph prevents a LEC from charging a lower rate for any rate element than the amount specified herein.

(I) Rounding. The rates for all access services shall be assessed using conventional rounding of fractional units of applicable billing units i.e. , a fraction equal to or greater than .5 of one unit will be rounded up to the next higher whole unit, while fractions less than .5 of one unit will be rounded down to the next lower whole unit except that local transport mileage may be rounded up to the next whole mile.

(5) ICAC transition. If the rates established in conformity with paragraph (4) of this subsection are not sufficient to yield a level of revenues equivalent to an LEC's base level of switched access revenues, as defined in subparagraph (A)(i) of this paragraph, and the LEC has not established an HCA requirement under §23.53(d) of this title (relating to the Universal Service Fund), then the LEC shall be entitled to receive transitional ICAC revenues as provided herein.

(A) Transitional ICAC revenues. Each LEC's benchmark level of transitional ICAC revenues shall be calculated annually as follows.

(i) 1991 switched access demand shall be multiplied by rates in effect as of August 31, 1992 for each switched access rate element, excluding ICAC, but including any applicable access credits, and added to 1991 booked ICAC revenues to determine the base level switched access revenues. However, for any LEC which has a PURA, §42 proceeding completed between January 1, 1992 and September 1, 1992, 1991 booked ICAC revenues shall be adjusted in accordance with the commission's final order in that §42 proceeding.

(ii) 1991 switched access demand shall be multiplied by the LEC's switched access rates to be effective September 1, of each calendar year during which the transitional ICAC revenue requirement is to be recovered in compliance with paragraph (4) of this subsection (excluding the transitional ICAC rate) to determine the LEC's initial compliance level of switched access revenues. In no event shall a terminating CCL rate of less than $.08 be used for purposes of this calculation.

(iii) Each LEC's benchmark level of transitional ICAC revenues shall be equal to its base level switched access revenues determined in accordance with clause (i) of this subparagraph. Less its initial compliance level of switched access revenues determined in accordance with clause (ii) of this subparagraph.

(B) Cap and phaseout. Each LEC's authorized level of transitional ICAC revenues shall be capped at the benchmark level established in accordance with paragraph (5)(A) of this subsection and shall be phased down and eliminated in accordance with the provisions of this paragraph. Except as provided in subparagraph (F) of this paragraph, the phaseout shall be accomplished as set out in clauses (i) and (ii) of this subparagraph.

(i) For LECs with less than 75,000 access lines as of January 1, 1992 the effective date and percentage of phasepout are as follows: September 1, 1992–25%; September 1, 1993–60%; March 1, 1995–100%.

(ii) For LECs with 75,000 or more access lines as of January 1, 1992 the effective date and percentage of phaseout are as follows: September 1, 1992–25%; September 1, 1993–60%; September 1, 1994–100%. The applicable phaseout percentage shall be applied to the LEC's benchmark level of transitional ICAC revenues determined in accordance with paragraph (5)(A) of this subsection.

(C) Transitional ICAC rate. Effective September 1, 1992, each LEC shall include in its access tariff a transitional ICAC rate set to yield the total level of transitional ICAC revenues established for all LECs in accordance with paragraph (5) of this subsection. The transitional ICAC rate shall be a uniform statewide rate element charged by all LECs except as otherwise provided in subparagraph (5)(F) of this subsection. The transitional ICAC rate shall be redetermined effective September 1, 1993 and September 1, 1994 to yield the level of transitional ICAC revenues established for all LECs for the next phasedown period. The transitional ICAC rate shall be eliminated effective March 1, 1995. The transitional ICAC rate shall be equal to the total authorized amount of transitional ICAC revenues for the 12-month period following the effective date of the new transitional ICAC rate divided by total transitional ICAC minutes of use reported for the 12-month period ending six months prior to the effective date of the new rate adjusted for any surplus or deficit from prior period. However the September 1, 1994 adjustment shall be based on total transitional ICAC minutes of use reported for the six month period ending February 28, 1994. If a surplus exists as of February 28 1995, the surplus shall be distributed to IXCs based on each IXC's proportionate share of total ICAC minutes of use for the twelve month period ending August 31, 1994. Any filing to change the transitional ICAC rate shall be made at least 60 days in advance of the effective date of the new rate.

(D) Revenue collection and disbursement. Monthly, each LEC shall forward to the association, established pursuant to §23.17 of this title (relating to Administration of IntraLATA Compensation and Interexchange Carrier Access Charge Revenues), all revenues collected pursuant to its tariffed transitional ICAC rate. Each month the association will disburse to each LEC 1/12 of its authorized level of transitional ICAC revenues for the then-applicable 12-month phasedown period. However, for the six-month phasedown period beginning September 1, 1994, the association will disburse monthly to each LEC 1/6 of the authorized level of transitional ICAC revenues.

(E) High cost assistance. Any LEC which establishes an HCA requirement pursuant to §23.53(d) of this title (relating to the Universal Service Fund) shall no longer be entitled to receive transitional ICAC revenues. Such LECs' benchmark level of transitional ICAC revenues shall not be considered for purposes of establishing the transitional ICAC rate in any subsequent phasedown period. The transitional ICAC revenue requirement and rate will be recalculated pursuant only to the schedules established in paragraph (5) of this subsection.

(F) Holdover cases. Any LEC which has not had its rates adjusted in conformity with this subsection as of September 1, 1992 shall continue to bill its tariffed ICAC rate until such time as its access rates are brought into compliance with this subsection. Such rate shall be deemed its transitional ICAC rate for the period during which it remains in effect. All ICAC revenues collected by such LECs shall be forwarded to the association and used to fund the transitional ICAC pool. The level of ICAC revenues that such LECs receive from the transitional ICAC pool will not be affected by the adoption of this section until such time as the access rates charged by such LECs are brought into compliance with this subsection.

(6) Initial compliance filing. Existing rates for access services shall remain in effect until changed by subsequent order of the commission. On or before June 1, 1992, each LEC shall file an initial application to bring its access rates into compliance with the provisions of paragraphs (4) and (5) of this subsection. Except as otherwise required by this subsection or commission order, the terms and conditions of each LEC's intrastate switched access tariff proposed in the initial compliance filing shall mirror the terms and conditions of its interstate switched access tariff as of June 1, 1992, The requirements of this paragraph are not applicable to Southwestern Bell Telephone Company. The initial compliance tariff for each LEC shall become effective September 1, 1992, unless

otherwise ordered by the commission. The initial compliance filing shall be supported by sufficient information to fully demonstrate compliance with the requirements of this subsection. However, the initial filing shall not be considered a major change of rates as defined by PURA, §43 unless the LEC's aggregate revenues will increase more than the greater of $100,000 or 2.0%. The LEC shall not be required to submit a rate filing package unless the initial filing constitutes a major rate change or unless the LEC is otherwise ordered to do so. The commission may review the initial compliance application:

(A) in any PURA, §42 proceeding underway on the effective date of this section;

(B) in a PURA, §42 proceeding initiated against an individual company after the effective date of this rule; or

(C) in a PURA, §43, or §43B proceeding initiated by the company after the effective date of this rule.

(7) Administrative provisions.

(A) PIU. Within 30 days after adoption by the commission of amended PIU reporting, auditing, and backbilling procedures for Southwestern Bell Telephone Company, all independent LECs must file administrative revisions to their intrastate access service tariffs to mirror the PIU provisions in the intrastate access service tariff of Southwestern Bell Telephone Company. The intrastate access service tariff of all LECs must contain at a minimum, the requirements stated in clauses (i)-(iii) of this subparagraph.

(i) Jurisdictional determination capability. If the LEC possesses the network capability to determine the jurisdiction of an access service, a monthly PIU, based upon the actual jurisdictional determination of access services used by the access customer, must be calculated by the LEC and applied to the monthly bill for each access customer.

(ii) No jurisdictional determination capability. If LEC network facilities are incapable of making a determination of the jurisdiction of an access service, an LEC may permit an access customer to either mirror the access customer's PIU for usage where jurisdictional determination is possible, or self-report on an annual basis. PIUs may be self-reported by access customers to LECs if all of the requirements of subclauses (I)-(IV) are met.

(I) A LEC must request and receive written representation from the self-reporting access customer that the access customer possesses a network technology which can accurately determine the jurisdiction of each access service used by the access customer.

(II) The LEC must request and receive a written representation from the access customer that the access customer calculates self-reported PIUs based upon the actual jurisdiction of each access service used by the access customer.

(III) The LEC must request and receive from the access customer, at a minimum, an annual report supporting the self-reported PIUs.

(IV) The LEC's intrastate access tariff must establish a monitoring procedure for the annual monitoring of all self-reported PIUs and an auditing procedure for timely auditing of questionable self-reported PIUs.

(V) The LEC's intrastate access service tariff must contain an adjustment procedure for the correction of access service bills which were based upon an erroneous PIU as determined through a PIU audit.

(VI) The LEC's intrastate access tariff must specify that the LEC is responsible for verifying the accuracy of the PIU report and the access customer is responsible for the accuracy of self-reported PIUs.

(iii) Default PIU. If the LEC's network facilities are incapable of determining call jurisdiction and the access customer fails to exercise either its mirror option or self-reporting option under subparagraph (A) (ii) of this paragraph, the LEC must provide written notice to the access customer by certified mail that, if the customer fails to exercise one of its options within 30 days, a PIU will be established at 50%.

(B) Meet point billing. The provisions in this subparagraph pertain to access services which are required to be meet point billed.

(i) Tariffs. LECs must file administrative tariff amendments to reflect compliance with the most current "Multiple Exchange Carrier Access Billing (MECAB)" and "Multiple Exchange Carrier Ordering and Design (MECOD)" guidelines within 60 days after acceptance of these guidelines or acceptance of revisions to these guidelines by the Federal Communications Commission. If the Federal Communications Commission accepts the "Small Exchange Company Access Billing (SECAB)" guidelines pertaining to meet point billing, small local exchange companies may file tariff amendments within 60 days after acceptance by the Federal Communications Commission to reflect compliance with MECAB through the implementation of SECAB.

(ii) Compensation. For any meet point billed service, an LEC is authorized to receive compensation for its portion of the jointly-provided access service. If an LEC receives compensation above the amount associated with the provision of its portion of a jointly-provided access service, the LEC must immediately file an administrative tariff amendment with the commission to recover only its portion of the jointly-provided service and, within 30 days after approval of the required tariff amendment, must refund the surplus amount received with interest to each affected customer. Additionally, LECs are prohibited from filing tariff amendments that result in a jointly-provided access service billed amount which exceeds charges for 100% of the jointly-provided service.

(C) Equal access. Beginning January 1, 1993, LECs must file with the commission, on January 1 of each odd-numbered year, a report which describes the LEC's 10-year forecasted plan and schedule for implementation of equal access technology in Texas. Reports filed on and after January 1, 1995, must include a description of all changes to the information provided in the prior biennial report, along with detailed explanations for such changes.

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 February 19, 1992.

TRD-9202501

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

Earliest possible date of adoption: March 27, 1992

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

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Customer Service and Protection

• 16 TAC §23.53

The Public Utility Commission of Texas proposes an amendment to §23.53 concerning the high cost assistance program for local exchange companies serving in high cost and rural areas of the state. The amendment provides for the creation and operation of the high cost assistance program under the Universal Service Fund and establishes a procedure for the determination and collection of assessments on all telecommunications utilities to provide money for the fund. The amendment also establishes the procedure for disbursements from the fund to qualifying local exchange companies.

Martin Wilson, Deputy General Counsel, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Wilson has determined that for each year of the first five years the amendment is in effect, the public benefits anticipated as a result of enforcing the amendment will be to assist local exchange companies in providing basic local exchange service at reasonable rates in high cost and rural areas of the state, thereby furthering the public policy of having adequate and efficient telecommunication service available to all citizens of the state at just, fair and reasonable rates. There will be no effect on small businesses as a result of enforcing this section. Because the amount of future disbursements to local exchange companies is unknown at this time, the amount of future assessments on telecommunications utilities is also unknown.

However, the total annual cost should not exceed the current amount of revenue collected from the Interexchange Carrier Access Charge assessed by local exchange companies which was approximately $90.0 million in 1990.

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

Comments on the proposed amendment (13 copies) may be submitted in writing to Mary Ross McDonald, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, by March 9, 1992. Replies to comments may be submitted in writing to the above-referenced address by March 16, 1992. Comments should refer to Project Number 9942.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §18, which grants the Commission the authority to adopt rules to protect the public interest and to provide equal opportunity in a competitive telecommunications market place; and §98 which authorizes the Commission to adopt and enforce rules requiring local exchange companies to establish a universal service fund to assist local exchange companies in providing basic local exchange service at reasonable rates in high cost rural areas.

§23.53. Universal Service Fund.

(a) (No change.)

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

(1)-(5) (No change.)

(6) Switched access demand–Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the carrier common line (CCL) rate element.

(c) (No change.)

(d) High cost assistance **(HCA)** [fund].

(1) Purpose. This section **establishes** [is to provide procedural] guidelines for [the establishment of criteria for providing] financial assistance to local exchange **carriers (LECs) that** [companies which] serve the high cost and rural areas of the state so that these **carriers** [companies] may provide basic local exchange service at reasonable rates.

(2) **Establishment of an HCA requirement.** [Proceeding]. **Any LEC may request that the commission establish an HCA requirement in a PURA, §42, §43, or §43(B) proceeding completed after the effective date of this subsection. Any LEC involved in a pending PURA, §42, §43, or §43(B) proceeding as of the effective date of this subsection in which the LEC's overall revenue requirement is at issue, and in which the LEC elects to file to bring its rates into compliance with §23.23 of this title (relating to Rate Design), may request that the commission establish an HCA requirement in that proceeding. Any LEC that has had a PURA, §42 proceeding completed after July 1, 1990 and prior to the effective date of this subsection in which its overall revenue requirement was at issue shall have its HCA requirement calculated as set out in subparagraphs (A)-(D) of this paragraph.**

(A) 1991 switched access demand by rate element shall be multiplied by the LEC's rates in effect as of August 31, 1992 for each switched access rate element, excluding the interexchange carrier access charge (ICAC) element, but including any applicable access credits, and added to 1991 booked ICAC revenues to determine the base level switched access revenues. However, for any LEC that has a PURA, §42 proceeding completed between January 1, 1992 and the effective date of this subsection, the 1991 booked ICAC revenues shall be adjusted in accordance with the commission's final order in that §42 proceeding. [Upon its own motion, or upon the petition of the commission's general counsel, the commission may, upon 30 days' published notice, institute a rulemaking or docketed proceeding regarding the establishment of a high cost assistance fund.]

(B) 1991 switched access demand by rate element shall be multiplied by the LEC's switched access rates to be effective September 1, 1992 in compliance with §23.23 of this title (relating to Rate Design), excluding the transitional ICAC rate. to determine the LEC's initial compliance level of switched access revenues. In no event shall a terminating CCL rate of less than $.08 be used for purposes of this calculation. [Any local exchange company may petition the commission regarding the need for establishment of a high cost assistance fund. Upon receipt of such petition, the commission may initiate an investigation of such need by taking comments of all interested parties or may institute a rulemking or docketed proceeding regarding the establishment of a high cost assistance fund.]

(C) Such LEC's initial level of HCA requirement shall be equal to its base level switched access revenues, determined in accordance with subparagraph (A) of this paragraph less its initial compliance level of switched access revenues determined in accordance with subparagraph (B) of this paragraph. Such LEC's HCA requirement shall remain at this level until changed in a subsequent PURA, §42, §43, or §43(B) proceeding. However, any such LEC with more than 75,000 access lines as of January 1, 1992 shall have its HCA requirement eliminated effective September 1, 1996, unless such LEC establishes a new HCA requirement in a subsequent §42, §43, or §43(B) proceeding, or unless otherwise ordered by the commission. [In any proceeding under subparagraph (A) or (B) of this paragraph, the commission shall consider:

[(i) the appropriate criteria to be used to evaluate an LEC's qualifications for high cost assistance;

[(ii) the methodology by which an assessment will be made against all telecommunications utilities to fund the high cost assistance portion of the USF;

[(iii) the methodology by which the level of disbursements will be determined for LECs which qualify for high cost assistance; and

[(iv) the administrative procedures which will govern the operation of the high cost assistance portion of the USF.]

(D) Any HCA requirement established pursuant to this paragraph shall be effective concurrently with the effective date of the switched access rates approved pursuant to the initial filing requirements of §23.23 of this title (relating to Rate Design). Receipts from the interstate universal service fund will be applied to the LEC's overall intrastate revenue requirement in any proceeding in which an HCA requirement is to be established. Once an HCA requirement is established for an LEC, that LEC's HCA requirement shall remain the same until adjusted in a subsequent PURA, §42, §43, §43(B) proceeding.

(3) Reporting. Each LEC shall be responsible for reporting to the administrator any change in the LEC's HCA requirement.

(4) Recovery of Costs through the universal service fund.

(A) An LEC will be reimbursed from the universal fund for any HCA requirement established for that LEC pursuant to paragraph (2) of this subsection. Each month the administrator shall disburse to each such LEC 1/12 of its established HCA requirement. Disbursements from the universal service fund will be made each month only upon receipt from the LEC of the monthly reports required by paragraph (4)(C)(iii) of this subsection. Disbursements may also be subject to such other limitations or conditions as determined by the commission to be just and reasonable.

(B) The commission and the administrator will be reimbursed from the universal service fund for those costs incurred as a result of the implementation and administration of the HCA program. The commission shall submit reports to the administrator showing the costs incurred for the previous reporting period. The administrator will verify such reports and issue reimbursements within 30 days after the due date of such reports.

(5) Universal service fund assessment.

(A) Cost. The cost of the HCA Program is the sum of:

***(i)* any HCA requirements established pursuant to paragraph (2) of this subsection;**

***(ii)* any costs associated with the implementation and administration of the HCA program incurred by the commission (including the costs incurred by the administrator on behalf of the commission); and**

***(iii)* any amount established as a reserve for such contingencies as late payments and uncollectibles.**

(B) Funding. Beginning with the effective date of this subsection and continuing through February 28, 1995, the cost of the HCA program shall be assessed to all telecommunications utilities, except local exchange carriers. Effective March 1, 1995, the cost of the HCA program shall be assessed to all telecommunications utilities, including local exchange carriers.

(C) Division of Assessment among telecommunications utilities.

***(i)* The administrator shall establish an assessment rate to apply to all telecommunications utilities, excluding or including LECs as described in subparagraph (B) of this paragraph. This rate shall be calculated by dividing the cost identified in subparagraph (A) of this paragraph for the current period by the appropriate total access MOU as set forth in subclauses (I) and (II) of this clause.**

(I) Through February 28, 1995, the appropriate total access MOU shall be the intrastate local switching access MOU as described in subsection (c)(3)(A) of this section.

(II) Effective March 1, 1995, the appropriate total access MOU shall be the sum of intrastate local switching access MOU as described in subsection (c)(3)(A) of this section, plus LEC intrastate equivalent access minutes of use as described in subsection (c)(3)(B) of this section.

***(ii)* The assessment to each telecommunications utility excluding or including LECs as described in subparagraph (B) of this paragraph, shall be the amount of that utility's total access MOU multiplied by the assessment rate for the current period calculated pursuant to clause (i) of this subparagraph. The administrator may develop a methodology to allow each LEC to net its HCA requirement against its assessment and forward the difference to the administrator. The assessment shall be treated as an access charge for purposes of §23.25 of this title (relating to Long Distance Rates). However, monthly changes to the assessment as a result of volume fluctuations or factors other than a change in the overall HCA requirements, shall not require a separate flow through filing more than once annually.**

***(iii)* LECs shall submit monthly reports to the administrator showing the appropriate total access MOU. Telecommunications utilities other than LECs shall submit monthly reports to the administrator showing additional data that is required by the administrator to calculate the assessments.**

(D) Reserves. Any amount established as a reserve pursuant to paragraph (4)(A)(iii) of this subsection that exists as of February 28, 1995 shall be distributed to all telecommunications utilities that paid assessments in 1994. The distribution amount shall be based on each utility's proportionate share of total access MOU for the 12-month period ending August 31, 1994.

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 February 19, 1992.

TRD-9202500 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: March 27, 1992

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

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 533. Practice and Procedure

• 22 TAC §533.10, 533.18, 533.25

The Texas Real Estate Commission proposes amendments to §§533 10, 533.18, and 533.25, concerning the commission's rules of practice and procedure. The amendments are necessary to conform the sections with the agency's enabling statute, Texas Civil Statutes, Article 6573a, as amended by the 72nd Legislature, and to conform the sections with the agency's current practices in contested cases

The amendment to §533 10 removes a reference to legislative oversight previously contained in Texas Civil Statutes, Article 6573a,

§5. The statutory provision was repealed in 1991 by the adoption of Senate Bill 432. The amendment also clarifies that 30 days' notice is not required for emergency rulemaking.

The amendment to §533.18 clarifies the authority of the chairman or member designated to preside by the chairman and authorizes the presiding member to enter orders which have been approved by the full commission.

The amendment to §533.25 conforms the section with the agency's current practice of making an electronic recording in most contested case proceedings. The 72nd Legislature removed language in the agency's enabling legislation which required stenographic notes to be taken.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Moseley also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be conformity between the agency's rules and its enabling legislation or current practices. 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 impact on local employment.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h) , which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§533.10. Adoption of Rules: Notice of Intent to Adopt Rules. Prior to the adoption of any rule **other than a rule adopted on an emergency basis**, the agency shall give at least 30 days' notice of its intended action. Notice of the proposed rule will be filed with the secretary of state, [and with] the lieutenant governor and the speaker of the house[,] and shall be mailed to any person making a timely written request therefore. [If the appropriate standing committees of both houses of the legislature transmit to the agency statements opposing adoption of a rule, the rule make not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the agency receives the committees' statements.]

§533.18. Contested Case: Presiding Officer.

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

(c) The chairman of the commission or a member designated by **the chairman** [him] shall preside over hearings conducted by the commission membership. The chairman [of the commission] or **designated member** [a member designated by him for that purpose] shall **administer oaths and** rule on the admissibility of evidence or amendments to pleadings. **The chairman or designated member may enter proposed orders which have been approved by the commission.**

§533.25. Contested Case: The Record. Stenographic notes **or an electronic recording** must be made and a record maintained in all contested cases before the agency.

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 February 12, 1992.

TRD-9202343 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: March 27, 1992

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

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Chapter 535. Provisions of the Real Estate License Act

The Commission

• 22 TAC §535.41

The Texas Real Estate Commission proposes an amendment to §535.41, concerning the procedures of the commission.

The amendment is necessary to conform the section with the agency's enabling legislation, Texas Civil Statutes, Article 6573a, as amended by the 72nd Legislature. The chairman of the commission is now designated by the governor instead of being elected by the members of the commission. The amendment also clarifies that the procedures to be followed in contested case proceedings are those set forth in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a and the agency's rules of practice and procedure.

Mark A. Moseley, 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. Moseley 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 conformity between the agency's rules and its enabling legislation or current practices. 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. There will be no impact on local employment.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.41. Procedures.

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

(c) Officers.

(1) Officers of the commission shall consist of a chairman, vice-chairman and secretary.

(2) The commission shall elect a **vice-chairman, and secretary** [officers] at a regular meeting in February of each year. **The governor shall designate one member to be chairman. Officers shall serve until their successors are elected or designated by the governor as the case may be.**

(d) Order of business.

(1) With the exception of proceedings in contested cases, meetings [Meetings] shall be conducted in accordance with Roberts Rules of Order.

(2) Proceedings in contested cases shall be conducted in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a and Chapter 533 of this title (relating to Practice and Procedure).

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 February 12, 1992.

TRD-9202338 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: March 27, 1992

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

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Suspension and Revocation of Licensure

• 22 TAC §535.141

The Texas Real Estate Commission proposes an amendment to §535.141, concerning initiation of investigations.

The amendment is necessary to conform the section with the agency's enabling legislations, Texas Civil Statutes, Article 6573a, Texas Civil Statutes, as amended by the 72nd Legislature. Complaints are no longer

required to be sworn or verified, and the amendment removes references to the previously required verification.

Mark A. Moseley, 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. Moseley 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 conformity between the agency's rules and its enabling legislation or current practices. 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. There will be no impact on local employment.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulation necessary for the performance of its duties.

§535.141. Initiation of Investigation; Compliance with Orders.

(a) If the Texas Real Estate Commission received a [verified] complaint, and such complaint on its face alleges a possible violation of the Real Estate License Act, the Texas Real Estate Commission shall investigate the complaint.

(b) (No change.)

(c) A real estate broker is responsible for all acts and conduct performed by a real estate salesman associated with or acting for the broker. A [verified] complaint which names a licensed real estate salesman as the subject of the complaint but does not specifically name the salesman's sponsoring broker, it is a complaint against the broker sponsoring the salesman at the time of any alleges violation for the limited purposes of determining the broker's involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesman as an agent for the broker.

(d) The designated officer or partner of a corporation or partnership licensed as a real estate broker is responsible for all acts and conduct of a real estate broker performed by or through the corporation or partnership. A [verified] complaint which names a corporation or partnership licensed as a broker as the subject of the complaint but which does not specifically name the designated officer or partner at the time of any alleged violation for the limited purposes of determining the designated officer's or partner's involvement in any alleged violation and whether the designated officer or partner fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients. A complaint which names a salesman sponsored by a licensed corporation or partnership but which does not specifically name the designated officer or partner of the corporation or partnership is a complaint against the broker who was acting as designated officer or partner at the time of any alleged violation by the salesman for the limited purposes of determining the designated officer's or partner's involvement in any alleged violation and whether the designated officer or partner fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesman as an agent of the corporation or partnership.

(e) Once a [verified] complaint has been filed with the commission, the commission has jurisdiction to consider, investigate, and take action based on the complaint. **Complaints** [Verified complaints] may be withdrawn only with the consent of the commission.

(f) If the information obtained by the commission in the course of the investigation of a [verified] complaint or as a result of an investigation authorized by the members of the commission constitutes reasonable cause to believe the respondents to the complaint may have committed other violations of the Act or a rule of the commission, no additional authorization shall be required for the commission to investigate and take appropriate action based on the information.

(g) If the commission suspends or revoked a license or certification or probates an order of suspension or revocation against a licensee or holder of a certificate issued by the commission, the commission may monitor compliance with its order and initiate action based on the authority of the original [verified] complaint or original authorization by the members of the commission.

(h)-(j) (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 February 12, 1992.

TRD-9202348 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: March 27, 1992

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

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TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention Program

Early Childhood Intervention Service Delivery

The Interagency Council on Early Childhood Intervention (Council) proposes amendments to §§621.22, 621.23, 621.27, 621.30-621.33, 621.41, 621.43, 621. 44, 621.46, and 621.48, concerning the early childhood intervention program. The amendments to §§621.23, 621.33, 621.41, 621.43, and 621.44 will clarify service delivery requirements and definitions in order to comply with federal regulations in Title 34, Code of Federal Regulations, Part 303, which implement Public Law 102-119, "Individuals with Disabilities Education Act Amendments of 1991". The amendments to §§621.22, 621.23, 621.27, 621.30, 621.31, 621.33, 621.43, 621.46, and 621.48 will consist of editorial changes and also clarifications to comply with the previously mentioned federal regulations.

Mary Elder, executive director, Early Childhood Intervention Program, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Elder 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 clearer regulations which will result in more effective compliance. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

Comments on the proposed amendments may be submitted to Mary Elder, Executive Director, Early Childhood Intervention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Ms. Elder will receive comments for 30 days after the proposed amendments have been published in the *Texas Register.*

- **25 TAC §§621.22, 621.23, 621.27, 621.30-621.33**

The amendments are proposed under the Human Resources Code, §73.003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays. The amendments will affect the Health and Safety Code, Chapter 73.

§621.22. Definitions.

Complaint–A formal written allegation submitted to the Council stating that a requirement of Public Law **102-119** [101-476], or an applicable federal and/or state regulation has been violated.

Council–The entity designated as the lead agency by the governor under Public Law **102-119** [101-476]. The Council has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. The Council has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules. The Council includes a representative appointed by the commissioner of each of the following agencies: the Texas Department of Health, the Texas Department of Human Services, Texas Mental Health and Mental Retardation, the Texas Education Agency, and a parent appointed by the governor of the State of Texas.

Surrogate parent–An individual appointed or assigned to take the place of a parent for the purposes of this chapter when no parent can be identified or located or when the child is under managing conservatorship of the state. A surrogate parent appointed under this chapter shall act to advocate for or represent the child, relating to the identification, evaluation, educational placement, and provision of Public Law **102-119** [101-476], Part H services.

§621.23. Service Delivery Requirements. Programs that receive (ECI) Early Childhood Intervention Program funds must have written policies and procedures which are implemented and evaluated in each of the following areas.

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

(3) Assessment and evaluation. The assessment and evaluation must be in accordance with the following criteria and procedures.

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

(D) All assessments and evaluations of the child or family **including tests and other evaluative methods and procedures** must be:

(i)-(v) (No change.)

(vi) based on appropriate use of **multiple** methods and procedures **which ensure that no single criterion is utilized to determine delay or atypical behavior.**

(E)-(F) (No change.)

(4) (No change.)

(5) Individualized family service plan (IFSP). An IFSP must be developed for each child and the child's family.

(A)-(F) (No change.)

(G) Service coordination.

(i)-(iii) (No change.)

(iv) The local program must ensure that all persons functioning as service coordinators are:

(I) (No change.)

(II) knowledgeable of Part H of Public Law **102-119** [101-476]; and

(III) (No change.)

(H)-(L) (No change.)

§621.27. Grant Application Submission and Review.

(a) (No change.)

(b) ECI review team-new. The ECI review team is formed by a parent representative and representatives of the TEA, **TXMHMR** [TDMHMR], TDHS, and TDH. The ECI review team will be responsible for making recommendations to the Council for approval or denial of all new requests and all expansion requests in which a currently funded ECI program is requesting money to expand in an unserved or underserved county in which a new program is also requesting approval of funds.

(c) ECI review team-continuation and expansion. For all continuation and expansion requests, including but not limited to, wait list children, the ECI review team will be composed of ECI staff members of the TEA, **TXMHMR** [TDMHMR], TDHS, and TDH.

§621.30. Cancellation of Contract with Provider and Withholding of Funds. The Texas Department of Health (TDH) may cancel the contract under the following conditions:

(1) (No change.)

(2) If TDH proposes a contract cancellation or to withhold funds at the request of the Council, TDH shall notify the provider in writing of reasons for the proposed cancellation, giving the Council's or the ECI **executive director's** [administrator's] reasons for the proposed action and giving the provider an opportunity for a hearing before the Council to contest the propose action. The hearing shall be in accordance with the Council's hearing procedures in §621.31 of this title (relating to Formal Hearing Procedures). The provider may request a hearing by giving written notification to the Early Childhood Intervention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3179. If a hearing is requested, the Council shall notify TDH of the hearing, and TDH shall be designated as a party. Any questions which the provider might have concerning the proposed action shall be addressed to the ECI **executive director** [administrator].

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

§621.31. Formal Hearing Procedures.

(a) (No change)

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

(1)-(7) (No change.)

(8) **TXMHMR** [TDMHMR]–The Texas Department of Mental Health and Mental Retardation.

(9) (No change.)

(c) (No change.)

(d) Filing of documents. All petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding governed by this section which is pending or to be instituted with the Council shall be filed with the ECI **executive director** [administrator] through the ECI office, 1100 West 49th Street, Austin, Texas 78756-3179. They shall be deemed filed only when actually received by such office.

(e)-(f) (No change.)

(g) Request for hearing. Any person who receives a written notice to propose to cancel the contract or a written notice to propose to withhold the funds must file a request for hearing with the ECI **executive director** [administrator] through the ECI office, 1100 West 49th Street, Austin, Texas 78756-3179 within 10 days of receipt of the notice. The request for hearing shall be deemed filed only when actually received by such office. Failure to file a request for hearing shall be considered a waiver by the person of his right to a fair hearing under Texas law. Failure to file a request for hearing shall be considered a waiver by the person of his right to a fair hearing after the action is taken to withhold the funds or to cancel the contract. The request for hearing should include:

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

(h) Docketing and numbering of causes; hearing date.

(1) Upon receipt of the request for hearing, which complies with this section as to form and content, the ECI **execu-**

tive director [administrator] shall docket the same as a pending proceeding, notify TDH, notify the chairperson of the Council, and appoint an attorney to represent the Council for the hearing.

(2) Upon receipt of the notification that a request for hearing has been docketed by the ECI **executive director** [administrator], the chairperson of the Council shall appoint the hearing examiner.

(3) (No change.)

(i) Appointment of the hearing examiner.

(1) (No change.)

(2) The commissioner, or his designee, of TDH, **TXMHMR** [TDMHMR], TEA, and TDHS shall designate one attorney employed by each agency to make up a pool of hearing examiners from which the chairperson of the Council shall appoint a hearing examiner and the ECI **executive director** [administrator] shall appoint an attorney to represent the Council for each hearing. The chairperson and the ECI **executive director** [administrator] will consider the extent of involvement of each agency in the matters being contested, and insofar as is practicable, the hearing examiner will be selected from the agency with least involvement and the attorney representing the Council will be selected from the agency with greatest involvement.

(3)-(4) (No change.)

(5) The ECI **executive director** [administrator] may request that the commissioner of TDH, TEA, TDHS, or **TXMHMR** [TDMHMR] designate one or more employees of any of these agencies with particular expertise and experience who are knowledgeable in the subject matter of the hearing in question in the evaluation of evidence presented at the hearing.

(j)-(n) (No change.)

(o) Action after the hearing.

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

(4) Final decision.

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

(E) When a contract has been canceled, either upon a final decision of the Council or by mutual agreement prior thereto, the provider shall notify parents of all children served by the provider that ECI approval has been canceled. If the provider fails to so notify the parents and furnish satisfactory documentation to the Council within 30 days that such notification has been made, the ECI **executive director** [administrator] may thereupon serve such notice upon said parents.

(p)-(q) (No change.)

§621.32. Application by Providers for Lapsed Funds.

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

(c) Direct service increases.

(1) An interested provider should complete a written request for additional funds which will include a narrative statement of need and documents describing the specific use of requested funds, proposed budget revision form showing the increase in each category requested (including the increase in program match where required), and a detailed justification for the request. This request should be sent to the ECI **executive director** [administrator] with a carbon copy to the program monitor assigned to the program.

(2) (No change.)

(3) The ECI **executive director** [administrator] will review the fiscal and program recommendations and prepare a recommendation for the next scheduled Council meeting.

(4)-(5) (No change.)

(d) Technical assistance related increases. A provider may request additional funds for specific technical assistance activities which are listed as a high priority on the program's technical assistance plan and can not be covered within their existing budget.

(1) (No change.)

(2) All requests for additional funds with a justification and budget summary form will be submitted by the program monitor to the ECI **executive director** [administrator]. All requests below $500 may be approved by the ECI **executive director** [administrator] and will be reported to the Council. All requests recommended for approval by the ECI **executive director** [administrator], for over $500, will be forwarded to the Council for approval.

(3) The program will be required to notify the ECI **executive director** [administrator] immediately if a decision to cancel the planned expenditure is made if money is available within the current budget. Additionally, those programs approved for technical assistance will be monitored for identification of available funds when quarterly reports are submitted.

§621.33. Waiver of Program Standards.

(a) (No change.)

(b) The appropriate monitor will review the request and forward a recommendation within 10 working days to the ECI **executive director** [administrator] for assignment to the waiver review committee.

(c) (No change.)

(d) The waiver review committee will consist of the ECI Program **executive director** [administrator], the Texas [Department of] Mental Health and Mental Retardation ECI coordinator, the Texas Education Agency ECI coordinator, and the ECI council chairperson. The recommendation of the waiver committee will be presented at the next scheduled council meeting for full council review. All decisions will be made by majority vote with the council chairperson voting in case of a tie.

(e)-(g) (No change.)

(h) Waivers shall not be approved if the waiver request would result in noncompliance with federal regulations or jeopardizes any procedural safeguard or rights of confidentiality.

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 February 18, 1992.

TRD-9202459

Austin R. Kessler
Chairperson
Interagency Council on Early Childhood Intervention

Proposed date of adoption: April 8, 1992

For further information, please call: (512) 458-7673

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Procedural Safeguards and Due Process Procedures

• 25 TAC §§621.41-621.43, 621.44, 621.46, 621.48

The amendments are proposed under the Human Resources Code, §73.003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays. The amendments will affect the Health and Safety Code, Chapter 73.

§621.41. Procedural Safeguards.

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

(d) Prior notice; native language.

(1) Prior notice. Written prior notice must be given to parents at least 10 days, **unless the timeline is waived by the parents,** before a public agency or service provider proposes, or refuses, to initiate or change the eligibility, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(2) Content of notice. The notice must be in sufficient detail to inform the parents about:

(A) the action **that is being proposed or refused or the** issues to be considered **and the reasons for taking these actions;**

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

(3) (No change.)

(e) (No change.)

(f) Surrogate parents.

(1) (No change.)

(2) The duty of the program includes the assignment of an individual to act as a surrogate [for the] **parent for the child in a way consistent with existing state laws and regulations.** This must include a method for:

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

(3)-(4) (No change.)

§621.43. Early Childhood Intervention Council Procedures for Resolving Complaints.

(a) An individual or organization may file a complaint with the council alleging that a requirement of Public Law **102-119** [99-457] or applicable federal and/or state regulation has been violated. The complaint must be in writing, be signed, and include a statement of the facts on which the complaint is based.

(b) (No change.)

(c) Procedures for receipt of complaint are as follows.

(1) All complaints received by the council program shall be forwarded to the ECI **executive director** [administrator] at the Texas Department of Health. The ECI **executive director** [administrator] will log and assign all complaints, monitor the resolution of those complaints, and maintain a copy of all complaints for a five-year period.

(2) The council will have the following information entered in the data file: name of complainant, name of program if applicable, date received, type of complaint, action taken, follow up, and case-closed date. Letters of acknowledgment will be mailed by the ECI **executive director** [administrator] to the program and to the complainant or to the third party if the complaint was forwarded by someone other than the complainant; e.g., the governor's office.

(3)-(4) (No change.)

(d) Procedures for investigation and resolution of complaints.

(1) After receipt of the complaint, the ECI **executive director** [administrator] will assign a staff person to conduct an individual investigation, on-site if necessary, to make a recommendation to the ECI **executive director** [administrator] for resolution of the complaint.

(2)-(3) (No change.)

(4) Complainants shall be informed in writing of the final decision of the ECI **executive director** [administrator] and of their right to request the secretary of the United States Department of Education to review the final decision of the ECI **executive director.** [administrator.]

(5) When a complaint is filed with the **executive director** [administrator] of the state ECI program, the ECI **executive director** [administrator] may offer mediation services as an alternative to proceeding with the complaint investigation. Mediation may be used when both parties agree. If both parties elect to participate in mediation, the investigation will be suspended until mediation is completed or one party requests that the investigation be conducted. **The selection of mediation to resolve the complaint can not deny or delay a parent's rights under this part. The mediation must be completed within 60 days.**

§621.44. Confidentiality. The council and each program have the following responsibilities in regard to confidentiality of information:

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

(3) Access rights.

(A) The parents of a child eligible under this chapter must be afforded the opportunity to inspect and review any records relating to **evaluations and assessments, eligibility determination, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about** [their] the child and the child's family. **Record means the records covered by the Family Educational Rights and Privacy Act of 1974, Title 20, United States Code Annotated, §1232g. Any participating agency, institution, or program which collects, maintains, or uses personally identifiable information or from which information is obtained for the purpose of determining eligibility for or providing early intervention services will be subject to these provisions.** The program shall comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to the identification, evaluation, or placement of the child, and in no case, more than 45 days after the request has been made.

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

(4)-(11) (No change.)

(12) Consent.

(A) (No change.)

(B) A provider may request that parents provide a release to share information with others for legitimate purposes. However, when such a release is sought.

(i)-(v) (No change.)

(vi) If the parent refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

(C) (No change.)

(13)-(16) (No change.)

(17) Enforcement. The lead agency will ensure that all policies and procedures related to confidentiality and procedural safeguards will be enforced through supervision and monitoring.

§621.46. Administrative Hearings Concerning Individual Child Rights.

(a) Purpose. This section is intended to bring the procedures for hearings of the council into compliance with Part H of the **Individuals with Disabilities Education Act, Amendments of 1991** [Education of the Handicapped Act] as amended by Public Law **102-119** [99-457], [20 United States Code 147 et seq] and the applicable federal regulations, 34 Code of Federal Regulations 303.1 et seq. This section supplements existing council rules governing hearings and is intended to be applied together except where a conflict exists, in which case this section shall prevail.

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

(e) Impartial hearing officer.

(1) Hearings shall be conducted by an impartial hearing officer appointed by the ECI **executive director** [administrator]. The hearing officer shall be a person who is licensed to practice law in the State of Texas, and who is knowledgeable about the provision of ECI services.

(2)-(3) (No change.)

(f)-(i) (No change.)

§621.48. Opportunities for Citizen Participation. In addition to other procedures listed in §621.5 of this title (relating to Public Participation) and §621.46 of this title (relating to Administrative Hearings Concerning Individual Child Rights), citizens have the opportunity to:

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

(4) submit a petition requesting the adoption of rules.

(A) All petitions proposing the adoption of ECI rules shall be submitted in writing to the ECI program **executive director** [administrator]. The petition shall contain the following:

(i)-(iii) (No change.)

(B) (No change.)

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

Issued in Austin, Texas, on February 18, 1992.

TRD-9202460

Austin R. Kessler
Chairperson
Interagency Council on Early Childhood Intervention

Proposed date of adoption: April 8, 1992

For further information, please call: (512) 458-7673

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter Y. Minimum Standards for Benefits for Long-Term Care Coverage Under Individual and Group Policies

- **28 TAC §§3.3801-3.3805, 3.3807, 3.3809-3.3815, 3.3818-3. 3826, 3.3828, 3.3829, 3.3831, 3.3832, 3.3839, 3.3840, 3.3849-3.3850**

The State Board of Insurance of the Texas Department of Insurance proposes amendments to §§3.3801-3.3805, 3.3807, 3.3809-3.3812, 3.3819, 3.3821-3.3826, and 3.3828, 3.3829, 3.3831, 3.3832, and new §§3 3813-3.3815, 3.3818, 3.3820, 3 3839, 3.3840, 3.3849, and 3 3850, concerning minimum standards for benefits for long-term coverage under individual and group policies, following passage of Article 13 of House Bill 62, Second Called Session of the 72nd Texas Legislature, creating the Insurance Code, Article 3.70-12. The amendments and new sections will assure orderly implementation and effective disclosure of long-term insurance benefits and premiums by companies licensed to provide such coverages. The amendment to §3.3801 references the authority vested in the board under the Insurance Code, Article 3.70-12. The amendment to §3 3802 provides that the purpose of this subchapter as amended is to implement the Insurance Code, Article 3.70-12, to provide uniform standards for benefits and disclosures, thereby facilitating the availability of long-term care coverage that is in the best interest of the insurance consumers of this state. The amendment to §3. 3803 provides that the sections apply to contracts and evidences of coverage issued by health maintenance organizations. The amendment to §3.3804 changes definition of essential terms to include health maintenance organizations and contracts or evidences of coverages issued by them. The amendment to §3.3805 extends the limitations applicable to §§3.3806-3.3812 to §§3.3813-3.3815 as well. The amendment to §3.3807 clarifies when the term "guaranteed renewable" may be used. The amendment to §3.3809 is editorial in nature only, and makes no substantive change to this section. The amendment to §3.3810 clarifies when the term "noncancellable" may be used. The amendment to §3.3811 makes reference to the Insurance Code, Article 3.70-12, §3(c), which sets out the restrictions on the definition of pre-existing conditions limitations. The amendment to §3.3812 removes the term "home health agency" from the policy definition of "provider " The amendment to §3.3819 sets standards for reserves and specifies the characteristics which must be present if the method of reserving is to be acceptable. The amendment to §3 3821 is editorial in nature and references the "department" rather than the "board." The amendment to §3. 3822 revises the minimum standard for renewability to include group coverage. The amendment to §3 3823 sets out disclosures to be made to applicants for long-term care coverage at the time of application for long-term care benefits or services. The amendment to §3.3824 sets out limitations on pre-existing conditions provisions generally, and sets out restrictions on pre-existing condition waiting periods and other probationary periods in circumstances where long-term care coverage is replaced. The amendment to §3.3825 clarifies that prior hospitalization or institutionalization limitations apply to group coverage, sets out further limitations on conditions for eligibility, and provides for required disclosures. The amendment to §3.3826 sets out a further restriction on limitations and exclusions for biologically-based brain diseases. The amendment to §3.3828 provides, in the event of conversion from a group policy having managed-care provisions, elucidation about substantially equivalent benefits. Such amendment also provides that upon discontinuance and replacement, the replacement coverage shall be offered to all persons covered under the previous group policy on a nondiscriminatory basis. The amendment to §3 3829 clarifies that required die look period available to all long-term care coverage applicants. Such amendment also provides that any permitted limitation or condition of eligibility must be clearly labeled and described in a separate paragraph of the policy or contract. The amendment to §3.3831 is nonsubstantive and made for purposes of clarification only. The amendment to §3.3832 requires that outlines of coverage provided in connection with long-term care coverage be standard in format and content, and sets out the essential requirements for such outlines of coverage. New §3.3813 provides a policy definition for the term "personal care." New §3.3814 provides a policy definition for the term "adult day care." New §3.3815 provides a policy definition for the term "home health agency" and the standards for home health and adult day care benefits. New §3.3818 provides for the occurrence of events which will result in the eligibility for benefits or services under long-term care coverages. New §3.3820 requires that any company offering long-term care coverage in this state also offer prospective covered persons the opportunity to purchase coverage providing for benefit levels to increase throughout the interval of coverage to mitigate the effects of economic inflation and increases to medical costs. New §3.3839 sets out standards for marketing long-term care coverages to assure that comparison of policies by agents will be fair and accurate, that excessive insurance is not sold or issued, and to help alleviate the practices of twisting, high pressure tactics, and cold lead advertising. New §38.3840 sets out the essential requirements for delivery of a long-term care insurance shopper's guide. New §3.3849 sets out the effective date of this subchapter as amended. New §3.3850 sets out the severability provisions which previously had comprised §3.3838.

Rhonda Myron, deputy insurance commissioner for the life group, 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, and there will be no effect on local employment or the local economy.

Ms. Myron also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the more effective regulation of long-term care coverages, the achievement of greater uniformity of standards for benefits in long term care coverages, and standardization of required disclosures, thereby resulting in availability and comparability of long-term care coverages which are in the best interests of insurance consumers of this state, and in harmony with the legislative directives in the Insurance Code, Article 3.70-12. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the proposed sections is the same as the cost of doing any accident and health insurance business. Many of the costs associated with the accident and health insurance business arise from the requirements of statute and not from these sections.

Comments on the proposal may be submitted to Rhonda Myron, Deputy Insurance Commissioner for the Life Group, Mail Code 106-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments and new sections are proposed under the Insurance Code, Article 3.70-12, §§3(a), 3(b), 4(c), and 7; Article 1.04(b); and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 3.70-12, §3(a), provides the board shall by rule establish specific standards for

provisions of long-term care coverage, and standards for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of long-term care coverages. Article 3.70-12, §3(b), provides that such rules are to include requirements no less favorable than the minimum standards adopted in any model laws or regulations relating to minimum standards for long term care insurance. Article 3.70-12, §4(c), provides that the board adopt reasonable rules providing loss ratio standards applicable to rates charged for long-term care coverages, in a manner no less favorable to the holders of such policies than any model laws, rules, and regulations adopted in connection with minimum standards for benefits for long-term care coverage. Article 3.70-12, §7, provides that in addition to other rules required or authorized, the board may adopt reasonable rules necessary and proper to carry out the article and that such rules shall include requirements no less favorable than minimum standards for long-term care coverage adopted in any model laws or regulations relating to minimum standards for benefits for long-term care insurance. The Insurance Code, Article 1.04(b), provides the board to determine rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4, authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures; §5 prescribes the procedures for adoption of rules by a state administrative agency.

§3.3801. Authority. This subchapter of rules and regulations of the State Board of Insurance is promulgated and adopted pursuant to the authority vested in the board under the Insurance Code, Article 1.04, and Article 3.70-**12**[1(F)(5)], as amended.

§3.3802. Purpose. The purpose of this subchapter is to implement the Insurance Code, Article 3.70-**12**[1(F)(5)], to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

§3.3803. Applicability and Scope. The sections in this subchapter apply to all long-term care insurance policies and group long-term care insurance certificates, other than those certificates issued or delivered pursuant to out-of-state single employer or labor union group policies, delivered or issued for delivery in this state on or after the effective date of this subchapter by insurers; by fraternal benefit societies, to the extent they are subject to provisions of Article 3.70-**12**[1(F)(5)]; and by nonprofit health, hospital, and medical service corporations, including a company subject to the Insurance Code, Chapter 20; except that they do not apply to a policy which is not advertised, marketed, nor offered as long-term care insurance or nursing home insurance. **The provisions of these sections also apply to evidences of coverage delivered or issued for delivery in this state by health maintenance organizations under the Texas Health Maintenance Organization Act (Texas Insurance Code, Chapter 20A).**

§3.3804. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant–The person who seeks to contract for benefits **or services**, in the instance of an individual long-term care insurance policy; or the proposed certificate holder **or enrollee**, in the instance of a group long-term care insurance policy.

Certificate–Any certificate issued under a group long-term care insurance policy, which certificate has been delivered or issued for delivery in this state. **For purposes of these sections, the term also includes any evidence of coverage issued pursuant a group health maintenance organization contract for long-term care health coverage.**

Long-term care insurance–Any insurance policy, group certificate, [or] rider to such policy or certificate, **or evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act (Texas Insurance Code, Chapter 20A)** which is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term "long-term care insurance" shall not include any insurance policy, [or] group certificate, **subscriber contract, or evidence of coverage** which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

Policy–Any policy, contract, subscriber agreement, rider, or endorsement, delivered or issued for deliver in this state by an insurer, fraternal benefit society, [or] nonprofit group hospital service corporation, **or health maintenance organization subject to the Texas Health Maintenance Organization Act (Texas Insurance Code, Chapter 20A.)**

§3.3805. Definitions in Policies. Except as otherwise provided by law or this subchapter, no long-term care insurance policy or certificate or group hospital service corporation subscriber contract, delivered or issued for delivery in this state, may contain definitions respecting the matters set forth in §§3.3806-**3.3815** [3.3820] of this title (relating to Minimum Standards for Benefits for Long-Term Care Insurance Coverage under Individual and Group Policies) unless such definitions comply with the requirements of said sections.

§3.3807. Policy or Certificate Definition of Guaranteed Renewable.

(a) The term "guaranteed renewable" may be used only **when the policyholder** [in an individual long-term care insurance policy which an insured] has the right to continue **the long term care insurance** in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(b) (No change.)

§3.3809. Policy Definition of Mental or Nervous Disorder. A definition of mental or nervous disorder as used in a policy or certificate **shall** [may] not be more restrictive than a neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

§3.3810. Policy or Certificate Definition of Noncancellable.

(a) The term "noncancellable" may be used only **when the policyholder** [in an individual long-term care insurance policy which the insured] has the right to continue **the long-term care insurance** in force by the timely payment of premiums during which period the insurer has no right to make any change in any provision of the insurance or in the premium rate.

(b) (No change.)

§3.3811. Policy Definition of Pre-existing Condition. No long-term care insurance policy or certificate shall use a definition of pre-existing condition which is more restrictive in its terms than what is provided [for] in the Insurance Code, Article **3.70-12, §3(c)** [3. 70-1(H)], and §3.3824 of this title (relating to Pre-existing Conditions Provisions).

§3.3812. Policy Definition of Provider.

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

[(c) The term "home health agency" may not be more restrictive than that definition provided for in the Insurance Code, Article 3.70-3B, §1.]

§3.3813. Policy Definition of Personal Care. The term "personal care" shall mean the provision of practical and essential services to assist an individual with the activities of daily living, such as bathing, eating, dressing, transferring, and toileting.

§3.3814. Policy Definition of Adult Day Care. The term "adult day care" shall mean a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

§3.3815. Policy Definition of Home Health Agency and Standards for Home Health and Adult Day Care Benefits.

(a) The term "home health agency" may not be more restrictively defined than a business which provides home health service and is licensed by the Texas Department of Health under Chapter 642, Acts of the 66th Legislature, 1979 (Texas Civil Statutes, Article 4447u).

(b) No long-term care insurance policy or certificate which provides benefits for home health care or adult day care services may exclude or limit benefits by requiring any of the following:

(1) that the insured would need care in a nursing facility if home health care services were not provided;

(2) that the insured first or simultaneously receive nursing and/or therapeutic services in a home, community, or institutional setting before home health care services are covered;

(3) that eligible services be provided by a registered nurse or nurses or licensed practical nurse or nurses;

(4) that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;

(5) that the provision of home health care services be at a level of certification or licensure greater than that which is required for the eligible service to be performed under the laws of this state;

(6) that the insured have an acute condition before home health care services are offered;

(7) that benefits be limited to services provided by Medicare certified agencies or providers; or

(8) that coverage for adult day care services be excluded.

(c) Home health care coverage may be applied to the total health care benefits provided in the policy or certificate when determining the maximum coverage under the terms of the policy or certificate.

§3.3818. Eligibility for Benefits. A long-term care insurance policy or certificate shall contain provisions conditioning eligibility for benefits or services upon the occurrence of either of the following events:

(1) the inability to perform, without assistance, two of the five activities of daily living, as set forth in §3.3813 of this title (relating to the Policy Definition of Personal Care); or

(2) the impairment of cognitive ability.

§3.3819. Requirement for Reserve. Reserves for long-term care benefits provided pursuant to the terms and conditions of policies or certificates which are subject to the provisions of this subchapter shall be determined in accordance with an acceptable method of reserving **established by a qualified actuary, consistent with all statutory and regulatory requirements of the state relating to minimum reserves for accident and health insurance, and** [which is] approved by the **Texas Department of Insurance** [board] concurrent with approval of the policy.

§3.3820. Requirement to Offer Inflation Protection.

(a) No insurer or other entity may offer a long-term care insurance policy or certificate in this state unless such insurer or other entity also offers to the prospective insured, or to the group policyholder, if the group policy will be issued to an employer, labor union, or continuing care retirement center, the option to purchase a policy that provides for benefit levels to increase throughout the interval of coverage to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each applicant, at the time of purchase, the option to purchase a policy that provides the inflation protection set out in paragraphs (1), (2), or (3) of this subsection.

(1) The policy and certificate shall be structured so that benefit levels increase annually, in a manner so that the increases are compounded at a rate not less than 5.0% annually throughout the interval of coverage.

(2) The policy and certificate shall guarantee the policyholder and certificate holder, if applicable, the opportunity to increase benefit levels on the annual policy anniversary date throughout the interval of coverage without providing evidence of insurability or health status, such that the additional benefit amount is not less than 5.0% greater than the original benefit amount, compounded annually. Such increase to benefit levels shall occur automatically unless the policyholders and certificate holders, if applicable, specifically rejected the option to increase in writing within 30 days following the anniversary date of the policy or coverage.

(3) The policy shall cover a specified percentage of actual or reasonable charges throughout the interval of coverage and not include a maximum specified indemnity amount or limit.

(b) The inflation protection provisions in subsection (a) of this section shall be required to be included in any long-term care insurance policy and certificate unless an insurer obtains a written rejection of inflation protection signed by the prospective policyholder, as provided in this subsection.

(1) The rejection shall be considered part of the application and shall state: "I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy (and certificate, if applicable), with and without inflation protection. I realize that based on current health care cost trends, the benefits provided by a long-term care plan which does not have meaningful inflation protection may be significantly diminished in terms of real value to me, depending on the amount of time which elapses between the date I purchase the policy and the date on which I first become eligible to use them. Specifically I have reviewed Plans * ________________, and I reject inflation protection."

(2) The agent shall provide information to assist the prospective policyholder in accurately completing the statement with respect to the plans reviewed by the applicant and denoted by the asterisk in paragraph (1) of this subsection.

(c) Insurers shall include the information set out in paragraphs (1) and (2) of this subsection in or with the outline of coverage.

(1) A graphic comparison of the benefit levels of a policy and certificate, if applicable, that increases benefits over the policy interval with a policy that does not increase benefits, depicting benefit levels over at least a 20-year period, shall be provided.

(2) A disclosure of any expected premium increases or additional premiums to pay for automatic or optional benefit increases shall be made. If premium in-

creases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages 75 and 85 for benefit increases. An insurer may use a reasonable hypothetical or a graphic demonstration for the purposes of this disclosure.

(d) Where the policy is offered to a group, the offer required by provisions of this subsection shall be made to the group policyholder; except that in the instance where the group policy will not be issued to an employer, labor union, or continuing care retirement community, the offering shall be made to each prospective covered individual.

(e) Inflation protection benefit increases under a policy which contains provisions for such increases, whether automatic or optional with the insured, shall continue without regard to an insured's age, claim status, or claim history, or the length of time the person has been insured under the policy.

(f) An offer of inflation protection providing for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner, in no smaller than 10-point (where 1 point is 1/72 of an inch) boldface type, that the premium may change in the future unless the premium is guaranteed to remain constant.

§3.3821. Limits on Group Long-Term Care Insurance. No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state to a group described in the Insurance Code, Article 3.51-6, §1(a), unless the **Texas Department of Insurance** [board] has made a determination that the group long-term care insurance requirements adopted by the State of Texas have been met, and the certificate for group long-term insurance coverage has been properly filed and approved by the **department** [board].

§3.3822. Minimum Standard for Renewability of [Individual] Long-Term Care Insurance Coverage [Provision]. No long-term care insurance policy **or certificate** issued **in this state** [to an individual] shall contain renewal provisions less favorable to the **policyholder** [insured] than guaranteed renewable as that term is defined in §3.3807[(a)] of this title (relating to Policy or Certificate Definition of Guaranteed Renewable).

§3.3823. Prohibited Policy Provisions; Required Disclosures.

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

(d) No long-term care insurance policy or certificate shall be utilized in such manner as would result in post-claims underwriting.

(1) All applications for long-term care insurance policies or certificates, except those that do not provide the company any rights to deny benefits or to rescind coverage based on answers in the application, shall contain questions designed to ascertain the health condition of the applicant and such questions shall be clear and unambiguous.

(2) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed. If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

(3) Except for policies or certificates which do not provide the company any rights to deny benefits or to rescind coverage based on answers in the application, the following language shall be set out conspicuously and in close proximity to the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, (company) may have the right to deny benefits or rescind your coverage.

(4) Except for policies or certificates which do not provide the company any rights to deny benefits or to rescind coverage based on answers in the application, the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company may have the right to deny benefits or rescind your coverage. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address).

(5) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

(A) a report of a physical examination;

(B) an assessment of functional capacity;

(C) an attending physician's statement; or

(D) copies of medical records.

(6) A copy of the completed application (or enrollment form if applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(7) Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy, contract, or certificate rescissions, both for coverage in this state and nationwide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the Texas Department of Insurance in a format approved by the department.

§3.3824. Pre-existing Conditions Provisions; **Limitations on Replacement.**

(a) No long-term care insurance policy or certificate issued **under provisions of this subchapter may contain a provision which denies a claim for losses incurred more than six months from the effective date of coverage for a pre-existing condition** [thereunder shall use a definition of pre-existing condition which is more restrictive than the definition contained in subsection (b) of this section].

(b) Pre-existing condition means a condition for which medical advice was given or treatment was recommended by, or received from, a **physician** [provider of health care services] within six months **before** [preceding] the effective date of coverage [of an insured person age 65 or over; or with 12 months preceding the effective date of coverage of an insured person under age 65 in instances where the insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of the application, but without any question covering the insured's health history or medical treatment history; or within two years, in any other instance].

[(c) No long-term care insurance policy, or certificate issued thereunder, may exclude coverage for a loss or confinement which is the result of a pre-existing condi-

tion, unless such loss or confinement begins within six months following the effective date of coverage of an insured person age 65 or over; or within 12 months following the effective date of coverage of an insured person under age 65 in instances where the insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history; or with two years, in any other instance.]

(c)[(d)] The definition of pre-existing condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a pre-existing condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection **(a)** [(c)] of this section expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions beyond the waiting period described in subsection **(a)** [(c)] of this section.

(d) Any long-term care insurance policy or certificate which replaces another long-term care policy or certificate shall contain provisions that waive any time periods applicable to pre-existing conditions and probationary periods in the new long-term care policy or certificate for similar benefits to the extent that such time periods have been satisfied under the policy being replaced.

§3.3825. Prior Hospitalization or Institutionalization.

(a) No long-term care insurance policy **or certificate** may be delivered or issued for delivery in this state which conditions the eligibility for benefits on prior hospitalization.

(b) No long-term care insurance policy **or certificate** may be delivered or issued for delivery in this state if such policy conditions eligibility for benefits provided in a institutional care setting on the receipt of a higher level of institutional care.

(c) No long-term care insurance policy or certificate may be delivered or issued for delivery in this state which conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

(d)[(c)] Any long-term care insurance policy **or certificate** containing **post-confinement, post-acute care, or recuperative benefits, which are subject to** any limitations or conditions for eligibility, **including any required number of days of confinement** [other than those prohibited in subsection (a) or (b) of this section], shall clearly label **such limitations or conditions, including any required number of days of confinement,** in a separate paragraph of the policy or certificate, entitled "Limitations or Conditions on Eligibility for Benefits"[, such limitations or conditions, including any required number of days of confinement].

(1) No long-term care insurance policy **or certificate** containing a benefit advertised, marketed, or offered as a home care or a home health care benefit may condition receipt of benefits on a prior institutionalization requirement.

(2) No long-term care insurance policy **or certificate** which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall require a prior institutional stay of more than 30 days for which benefits are paid.

§3.3826. Limitations and Exclusions.

(a) No policy **or certificate** may be delivered or issued for delivery in this state as a long-term care insurance policy or **certificate** if such policy **or certificate** limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(1) (No change.)

(2) mental or nervous disorders; however, this shall not permit exclusion or limitations of benefits on the basis of the **following:**

(A) Alzheimer's disease or related disorders, where a clinical diagnosis of Alzheimer's disease by a physician licensed in this state, including history and physical, neurological, psychological, and/or psychiatric evaluation, and laboratory studies, has been made to satisfy any requirement or demonstrable proof of organic disease or other proof under the coverage; **or**

(B) biologically based brain diseases/serious mental illness, including schizophrenia, paranoid and other psychotic disorders, bipolar disorders (mixed, manic, and depressive); major depressive disorders (single episode or recurrent); and schizo-affective disorders (bipolar or depressive);

(3)-(5) (No change.)

(b) (No change.)

§3.3828. Continuation or Conversion; Discontinuance and Replacement.

(a) Continuation or conversion. An insurer or **other entity providing** [similar organization issuing a] group long-term care insurance **coverage** [policy] shall provide a basis for continuation or conversion of coverage.

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

(3) For the purposes of this section, the term "converted policy" means an individual **or group conversion** policy of long-term care insurance providing benefits identical to or benefits determined by the board to be substantially equivalent to, or greater than, those provided under the group policy from which conversion is made. **Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use, certain providers and/or facilities, the board, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.**

(4)-(10) (No change.)

(b) Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(1) shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced; and

(2) shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

§3.3829. Required Disclosure Provisions.

(a) **Long-term** [Individual long-term] care insurance policies **and certificates** shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the coverage for which the policy is issued and for which it may be renewed.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the **policyholder**

[insured] under **a** [an individual] long-term care insurance policy **and/or certificate**, all riders or endorsements added to **a** [an individual] long-term care insurance policy **and/or certificate** after date of issue or at reinstatement or renewal, which reduce or eliminate benefits or coverage in the policy **and/or certificate**, shall require signed acceptance by the **policyholder** [individual insured]. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the **policyholder** [insured], except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits in connection with riders or endorsements, such premium charge shall be set forth in the policy, **certificate**, rider, or endorsement.

(c) A long-term care insurance policy **and certificate** which provides for the payment of benefits on standards described as usual and customary, reasonable, and customary, or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) (No change.)

(e) Long-term care insurance applicants shall have the right to return the policy or certificate within **30** [10] days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within **30** [10] days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

(f) A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in the Insurance Code, Article 3.70-12 or §3.3824 of this title (relating to Pre-Existing Conditions Provisions and Limitations on Replacement) shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy and certificate and shall label each paragraph "Limitations or Conditions on Eligibility for Benefits."

§3.3831. Loss Ratio Standards and Rates.

(a) Benefits **provided** under [individual] long-term care insurance policies **and certificates** shall be deemed reasonable in relation to premiums **charged** [provided] if the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(1)-(13) (No change.)

(b) Prior to the use of any long-term care policy **or certificate** form in this state, every insurer shall submit to the board an actuarial memorandum for each such policy which includes claim experience data and assumption made thereon to sufficiently explain how the rates for such policy form are calculated. **The actuarial memorandum submitted shall also at least provide information which includes premium rate tables and/or schedules for each risk class and any fees, assessments, dues, or other considerations that will be included in the premium.**

§3.3832. Outline of Coverage.

(a) An outline of coverage shall be delivered to an applicant for an individual long-term care insurance [policy] at the time of **initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose** [application for an individual policy]. **In the case of agent solicitations, the outline of coverage shall be delivered prior to the presentation of an application or enrollment form.** In the case of direct-response solicitations, [the insurer shall deliver] the outline of coverage [upon the applicant's request but, regardless of request,] shall **be delivered in conjunction with any application or enrollment form** [make such delivery no later than at the time of policy delivery]. **The outline of coverage shall comply with the following standards and standard format. The contents of the outline of coverage shall include the following prescribed text.**

(1) The outline of coverage shall be a free-standing document, in no smaller than 10-point type.

(2) The outline of coverage shall contain no material of an advertising nature.

(3) Text which is capitalized in the standard format outline of coverage shall be capitalized. Text which is underscored in the standard format outline of coverage may be emphasized by boldfacing or by other means which provide prominence equivalent to such underscoring.

(4) Use of text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(b) The outline of coverage shall be in the following **format** [form].

(Company Name)
(Address-City & State)
(Telephone Number)
Long-Term Care Insurance
Outline of Coverage
(Policy Number or Group Master Policy and Certificate Number)

(Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.)

Caution: The issuance of this long-term care insurance (policy) (certificate) is based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company may have the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)

[graphic]

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

(3) Terms under which the policy or certificate may be returned and premium refunded.

(A) (Provide a brief description of the right to return–"free look" provisions of the policy. State that the person to whom the policy is issued is permitted to return the policy within **30** [10] days (or more, if so provided for in the policy) of its delivery to that person, and that in the instance of such return the premium shall be fully refunded.)

(B) (No change.)

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

(9) Terms under which the (policy) (certificate) may be continued in force and is continued. (Provide the following.

(A) (a description of the policy renewability provisions[)];

(B) (for group coverage, a specific description of continuation/conversion provisions applicable to the certificate and group policy[)];

(C) (a description of waiver of premium provisions or a statement that there are no such provisions[)], and

(D) (a statement of whether or not the company has a right to change premium, and if such a right exists, a clear and concise description of each circumstance under which premium may change.)

(10)-(11) (No change.)

§3.3839. Standards for Marketing.

(a) Every insurer, health care service plan, or other entity marketing long-term care insurance coverage in this state, directly or through its agents, shall establish marketing procedures to assure that:

(1) any comparison of policies by its agents or other producers will be fair and accurate;

(2) excessive insurance is not sold or issued;

(3) every reasonable effort is made to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long term care insurance and the types and amounts of any such insurance;

(4) auditable procedures are in place to verify compliance with this subsection.

(b) Every insurer or other entity marketing long term care insurance coverage in this state, directly or through its agents, shall ensure that the notice provided in paragraph (1) or (2) of this subsection, as appropriate, is prominently displayed by type, stamp, or other appropriate means on the first page of both the policy and the outline of coverage

(1) For any policy or certificate which contains inflation protection provisions, the notice shall read as follows: "Notice to buyer: This policy (or certificate) may not cover all of the costs associated with long-term care incurred by the policyholder (or certificate holder) during the period of coverage. The policyholder (or certificate holder) is advised to review carefully all policy limitations."

(2) For any policy or certificate which does not contain inflation protection provisions, the notice shall read as follows: "Notice to buyer: This policy (or certificate) may not cover all of the costs associated with long-term care incurred by the policyholder (or certificate holder) during the period of coverage. The policyholder (or certificate holder) is advised to review carefully all policy limitations. In addition, the policyholder (or certificate holder) is advised that based on current health care cost trends, the benefits provided by this policy (or certificate) may be significantly diminished in terms of real value to the policyholder (or certificate holder), depending on the amount of time which elapses between the date of purchase and the date upon which the policyholder (or certificate holder) first becomes eligible for those benefits."

(c) In addition to the practices prohibited in the Insurance Code, Article 21.21, the following acts and practices in the marketing of long term care policies or coverages in this state are prohibited.

(1) Twisting–Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics–Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising–Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(4) Misrepresentation–Selling, marketing, offering, or advertising any insurance policy, certificate, or rider to such policy or certificate, which substantially meets the definition of long-term care insurance found in the Insurance Code, Article 3.70-12, §2, Insurance Code, but which provides benefits for a period of fewer than 12 months.

§3.3840. Requirements to Deliver Shopper's Guide. A long-term care insurance shopper's guide in the format developed by the Texas Department of Insurance, shall be provided to all prospective applicants of a long-term care insurance policy or certificate, as provided in this section. In the case of agent solicitation, an agent must deliver the sented in conjunction with any application or enrollment form.

§3.3849. Effective Date. The sections of this subchapter, as amended and adopted by the board, shall become effective 20 days from the date they are filed, as adopted by the board, with the Office of the Secretary of State and shall be applicable to all long-term care insurance policies and subscriber contracts of hospital and medical service associations filed for approval on and after March 1, 1992. Any policy filed for approval on or after January 1, 1992 to be delivered or issued for delivery on or after March 1, 1992 must comply with the provisions of this subchapter.

§3.3850. Severability. If any provision of the sections in this subchapter or its application to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of sections which can be given effect without the invalid provisions, and to this end, the provisions of each section are declared to be severable.

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 February 19, 1992

TRD-9202505 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: March 27, 1992

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

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Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.7

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §7.7. concerning subordinated indebtedness, surplus debentures, surplus notes, premium income notes, bonds, or debentures, and other contingent evidences of indebtedness. The amendment is necessary to implement Article 1.39 enacted by passage of House Bill 62, 72nd Legislature, Second Called Session, 1991. Article 1.39 provides for the regulation of the issuance and repayment of subordinated indebtedness by insurers, the adequacy and appropriateness of the terms of repayment of subordinated indebtedness considering the financial condition of the insurer, and the assurance of consistency in accounting for subordinated indebtedness by insurers.

William L. Doolittle, deputy commissioner, holding company activity, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section and there will be no effect on local employment or local economy

Mr. Doolittle 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 more efficient administrative regulation of insurers and subordinated indebtedness of insurers. The effect on small businesses will be the minimal cost of completion and filing of the application On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large business. There is no anticipated economic cost to persons who are required to comply with the section, as proposed, other than the minimal cost of completion of applications, reporting on certain occurrences and transactions.

Comments on the proposal may be submitted to William L. Doolittle, Deputy Commissioner, Holding Company Activity, Mail Code 304-2A, Texas Department of Insurance, P. O Box 149104, 333 Guadalupe, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine rules in accordance with the laws of this state, the Insurance Code, Article 1.39, which makes subordinated indebtedness agreements and repayments and payments thereon subject to approval by the commissioner; and, Texas Civil Statutes, Article 6252-13a, §4 and §5, which require and authorize each state administrative agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribe the procedure for adoption of rules by state administrative agencies.

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

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

(1) Insurer–An insurer authorized to do business under the law of this state and includes life, health, and accident insurance companies, fire and marine companies, general casualty companies, title insurance companies, fraternal benefit societies, mutual life insurance companies, local mutual aid associations, statewide mutual assessment companies, mutual insurance companies other than life, farm mutual insurance companies, county mutual insurance companies, Lloyd's plans, reciprocal and interinsurance exchanges, group hospital service corporations, health maintenance organizations, stipulated premium insurance companies, and nonprofit legal services corporations.

(2) Minimum surplus or floor–The amount of surplus specified in any written agreement which may not be used for payments or repayments of subordinated indebtedness and which amount must exceed the statutory minimum surplus required by statute, rule, or regulation. Such minimum surplus shall not cause a liability to be immediately posted.

(3) Subordinated Indebtedness–Any contingent indebtedness issued by an insurer for which the recipient assumes a subordinated liability for repayment of principal and payment of interest pursuant to a written agreement providing for payment only out of that

portion of an insurer's surplus that exceeds a minimum surplus stated in the agreement. Subordinated indebtedness includes advances made in accordance with the Insurance Code, Articles 11.16, 17.17, and 19.07, and surplus notes, as herein defined.

(4) Surplus notes–Surplus notes, also known as "surplus debentures, " "contribution certificates," "surplus capital notes," and "premium income notes, bonds, or debentures," and other contingent evidences of indebtedness, however denominated, are financing vehicles that increase the surplus of an insurer.

(b) General provisions.

(1) The issuance of subordinated indebtedness shall not be utilized to initially capitalize an insurer, other than a mutual life insurer, a county mutual, or a reciprocal or interinsurance exchange.

(2) The proceeds received by an insurer in return for the issuance of subordinated indebtedness shall be in the form of cash, cash equivalent securities, or government backed obligations of readily determinable value.

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

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

(1) The creditor may be paid only out of the portion of the insurer's surplus that exceeds the minimum surplus stated in the agreement.

(2) The minimum surplus or floor shall exceed the statutory minimum surplus required by any statute, rule, or regulation and the minimum surplus shall not cause a liability to be immediately posted.

(3) All payments of principal and interest shall be subject to the prior approval of the commissioner.

(4) If the subordinated indebtedness is in the form of a premium note, bond, or debenture, a provision must be included for the payment or repayment only out of a sinking fund established by the insurer by setting aside a specified percentage of the insurance premium income collected by the insurer during a specified period. Any payments from the sinking fund to the holder require prior approval of the commissioner.

(5) In the event of liquidation, claims under the agreement are subordinated to policyholder and beneficiary claims.

(d) Filing requirements.

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

(2) Applications for approval of payment of interest or repayment of principal are subject to the prior approval of the commissioner and shall be filed at least 60 days prior to the date of the proposed payment, or such shorter period as the commissioner may permit. Payment may be made 90 days after the filing of the application provided the commissioner has not disapproved the application within such period. No such application shall be deemed filed until the date all material required and sufficient to constitute a full application has been provided.

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

(A) the nature and purpose of the transaction;

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

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

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

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

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

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

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

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

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

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

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

(A) The terms shall be fair and equitable.

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

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

(e) Accounting requirements.

(1) All financial statements published by any insurer or filed with the commissioner must show as a liability that portion of the insurer's surplus that exceeds the minimum surplus as defined in the written agreement to the extent of the unpaid principal balance thereon.

(2) All agreements shall be clearly reported in an insurer's "Notes to Financial Statements" of the annual statement indicating that payment of interest and repayments of principal are subject to the prior approval of the commissioner.

(3) An insurer holding subordinated indebtedness may report it as an admitted asset equal to the amount approved by the commissioner for payment by the issuer but not yet paid.

(f) **Applicability to foreign insurers. The provisions of this section shall apply to insurers domiciled in another state unless such other state regulates the issuance and payment or repayment of subordinated indebtedness under laws, rules, or bulletins that the commissioner finds are substantially similar in substance and effect to Texas law and rules. To pursue this exception, the insurer shall provide, upon request, to the commissioner evidence of similarity in the form of statutes, regulations, and interpretation of the standards utilized by the state of domicile.** [This section applies to annual statements, or any financial statement filed by any insurance company with the State Board of Insurance, and examination reports. Any outstanding form of indebtedness or portion thereof which is not a balance sheet liability shall be reported on a separate line in the capital and surplus section of the balance sheet. Any type of contingent obligation which does not contain a minimum sum certain to be paid shall be reported on the balance sheet as a footnote immediately below the capital and surplus section. The footnote shall disclose at least the method by which principal and interest are determined and state the amount of accrued interest and the rate of interest.]

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 February 19, 1992.

TRD-9202503 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: March 27, 1992

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Fisheries and Wildlife

Subchapter A. Statewide Hunting and Fishing

- **31 TAC §§65.3, 65.13, 65.40, 65.72**

The Texas Parks and Wildlife Commission proposes amendments to §§65.3, 65. 13, 65.40, and 65 72, concerning the Statewide Hunting and Fishing Proclamation. The proposed amendments are in compliance with Texas Parks and Wildlife Code, Chapter 61, and represent required findings of fact. These findings are based upon scientific studies and surveys which track trends in relative abundance of the different fish and wildlife species. The rules as proposed are designed to prevent depletion or waste of wildlife resources. The amendments that differ from the existing 1991-1992 Statewide Hunting and Fishing Proclamation are summarized by the following sections.

Section 65.3, concerning definitions, modifies coastal waters boundary to exclude Lakeview City Park lake in Corpus Christi and Lake Burke-Crenshaw in Harris County from that area within the boundary.

Section 65.13, concerning firearms, clarifies, from misinterpretation, text of subsections (c)-(d). The proposed amendment prohibits hunting with a broadhead hunting point while in possession of firearms during archery-only seasons.

Section 65.40, concerning deer, white-tailed and mule deer, amends the special late antlerless only season to begin on the Saturday after the close of the South Texas general season.

Section 65.72, concerning fish, amends rules relating to fishing for several different purposes such as permitting the fish to spawn once before being retained, moderating cyclic fish populations resulting from water level fluctuations, and enhancing fishing experiences at heavily utilized small urban and state park lakes.

Statewide changes: increases minimum length of flathead (yellow) catfish from nine to 24 inches, removes bag and possession limits for yellow bass, and prohibits netting in public freshwater after September 1993 except by permit.

Black bass exceptions: in Joe Pool Reservoir changes black bass size limit from an 18-inch minimum to a 14-21-inch slot limit, and places 12-15-inch slot limit on smallmouth bass in Lake Meredith.

Crappie exceptions: reduces crappie bag limit from 25 to 15-day in Choke Canyon while minimum size limit remains the same at 10 inches.

Exceptions for state parks and small urban lakes (Urban fishing enhancement program): In Purtis Creek a person may retain one bass over 22 inches in a live well until weighed at park weigh station; designates Lakeview City Park and Burke-Crenshaw Lakes as outside of coastal boundary; provides bass catch-and-release only for Nelson Park and Buck Lakes; places an 18-inch minimum length three-fish daily bag for bass at Bright and Madisonville Lakes; places 14-18-slot limit for bass in Burke-Crenshaw Lake; places 14-inch minimum and five-day on channel and blue catfish in Bright, Burke-Crenshaw, and Nelson Park Lakes; and prohibits the use of trotlines, juglines, and throwlines in Burke-Crenshaw and Bright Lakes.

Statewide means and methods: allows non-game fish taken by legal means (shad trawl, seine, cast net, minnow trap, and umbrella net) to be used for any purpose and removes size restriction on dip nets.

Experimental regulations: places 16-inch minimum, three fish per day on black bass at Lakes Coleman and Brownwood; places 12-inch minimum on white bass at Lakes Conroe, Livingston, Somerville, Limestone, and Palestine and in the rivers above those lakes; places 14-inch minimum length, 15 per day on catfish in Choke Canyon, Cooper, Fairfield and O. H. Ivie Lakes; places seven-inch minimum length limit, 25 fish per day on sunfish in Purtis Creek State Park Lake.

Possession limits: changes possession limit to twice the daily bag limit for greater amberjack, cobia, king and Spanish mackerel, sharks and red snapper, for simplicity, but retains charter vessel daily bag limit exceptions for king mackerel, increases daily bag limit on Spanish mackerel from three-day to seven-day, permits the use of sail lines to take sharks, and clarifies text relating to possession of fish while fishing on or in public waters.

Robin Riechers, staff economist, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications to state or local governments as a result of enforcing or administering the sections. The proposed sections generally restrict to an additional degree the bag, possession, and size limits for selected species of fish. These restrictions are designed to permit those species to spawn at least once before being retained. Other proposed rules are designed to reduce the negative cyclic effects of water level fluctuations upon crappie and bass populations. Additionally selected experimental regulations such as slot limits and urban fisheries enhancement programs permits this department to regulate fish age and population structure for appropriate reservoir management. Fiscal implications to small businesses may be reduced sales of gear, supplies, etc., to persons as a result of the amended rules. Expenditures in certain locales may be increased or decreased due to the restrictions upon the targeted species. It is not expected that there will be fiscal implications to state or local governments.

Ms. Riechers 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 as proposed will be the permitting of appropriate take of wildlife and fish resources consistent to maintain viable populations for the future. There will be no effect on small businesses. It is anticipated there will be fiscal implications to persons who are required to comply with the sections. Any person who depends upon expenditures of others that exercise their recreational or commercial privileges may find reduced income as a result of the sections as proposed. Commercial freshwater fishermen who currently are using nets will be negatively affected by these rules. They will now only be able to use nets by permit.

There will be certain economic benefits associated with the proposed sections which include increased efficiency in the enforcement of regulations and the added clarity or simplification of the regulations to the public which will reduce confusion to persons who are required to comply with the regulations To a

somewhat greater degree the proposed selective regulations may enhance the quality of the fishing experience and increase the poundage of those fish that may be retained. For example, the Urban Fishing Enhancement Program implemented last year was created to provide increased recreation and increased enjoyment in the fishing experience of persons who reside in towns with small heavily utilized lakes.

Since the sections as proposed are based upon acknowledged wildlife and fisheries resource management tenets it is anticipated that the net value of economic effects to the state will be positive.

The department has filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure and Texas Register Act, §4A and as of this date has not received a reply.

Comments on the proposal may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; telephone (512) 389-4974 or 1 (800) 792-1112, extension 4974.

The amendments are proposed under the Texas Parks and Wildlife Code, Chapter, §61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983) which provides the Texas Parks and Wildlife Commission with authority to establish wildlife resource regulations for this state.

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

Coastal waters boundary–For purposes of the Texas Parks and Wildlife Code, Chapters 61 and 66, all public waters east and south of the following boundary are considered coastal waters: beginning at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (F.M. Road 1847) in Brownsville, thence northward along F.M. Road 1847 to the junction of F.M. Road 106 east of Rio Hondo, thence westward along F.M. Road 106 to the junction of F.M. Road 508 in Rio Hondo, thence northward along F.M. Road 508 to the junction of F.M. Road 1420, thence northward along F.M. Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of F.M. Road 774 in Refugio, thence eastward along F.M. Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of F.M. Road 616 in Bloomington, thence northeastward along F.M. Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of F.M. Road 521 north of Palacios, thence northeastward along F.M. Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction of F.M. Road 2004 in Lake Jackson, thence northeastward along F.M. Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the junction of State Highway 73 in Winnie, thence eastward along State Highway 73 to the junction of U.S. Highway 287 in Port Arthur, thence northwestward along U.S. Highway 287 to the junction of Interstate Highway 10 in Beaumont, thence eastward along Interstate Highway 10 to the Louisiana State Line. The public waters north of the dam on Lake Anahuac in Chambers County: north and west of the junction of the north and south forks of the Guadalupe River in Calhoun and Refugio Counties; the waters of Taylor Bayou and Big Hill Bayou inland from the saltwater locks on Taylor Bayou in Jefferson County; [and] the Galveston County Reservoir on State Highway 146 in Galveston County; **Lakeview city Park Lake in Corpus Christi; and Lake Burke-Crenshaw in Pasadena, are not considered coastal waters for purposes of this proclamation.**

§65.13. Firearms.

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

(c) **It is unlawful to hunt with a broadhead hunting point while in possession of a firearm during archery-only seasons.** [It is unlawful to hunt deer or turkey with a firearm or possess a firearm while hunting deer or turkey with archery equipment during the archery season.]

[(d) Subsection (c) of this section does not prohibit the possession of a shotgun on the person of the hunter, in a hunting camp, or in an automobile if:

[(1) the shotgun is not used for the taking or assisting in the taking of deer or turkey; and

[(2) the person possesses on his person or in the hunting camp or automobile no shotgun shells having shot larger in size than number four shot.]

(d)[(e)] It is unlawful to hunt game animals or game birds with automatic or fully automatic firearm or any firearm equipped with a silencer or sound suppressing device.

§65.40. Deer: White-tailed and Mule Deer. No person may take more than the aggregate total of five deer per license year; of which no more than two may be mule deer, only one of which may be a buck mule deer; no more than two white-tailed buck deer, or no more than five antlerless deer, both species combined.

(1) White-tailed deer: general open seasons, bag, and possession limits shall be as follows.

(A) (No change.)

(B) In Aransas, Atascosa, Bee, Brooks, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (only south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina (only south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (only south of U.S. Highway 90), Webb, Willacy, Zapata, and Zavala Counties, there is an open season for white-tailed deer.

(i)-(iii) (No change.)

(iv) Special (South Texas) late season. In the counties listed in this subparagraph there is a special late antlerless only white-tailed deer season.

(I) Open season: **January 16-31, 1993** [January 18-February 2, 1992].

(II) (No change.)

(C)-(E) (No change.)

(2)-(5) (No change.)

§65.72. Fish.

(a) (No change.)

(b) Bag, possession, and length limits.

(1) It is unlawful for any person while fishing on **or in** public waters to have in his possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters.

(2)-(3) (No change.)

(4) There are no bag, possession, or length limits on game or nongame fish, except as provided in these rules.

(A) Statewide daily bag, possession, and length limits shall be as follows:

Species	Daily Bag	Possession	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	3	6 [3]	32	No limit
Black Basses	5 (in aggregate)	10 (in aggregate)		
Largemouth and smallmouth bass, their hybrids, and subspecies.			14	No limit
Spotted and Guadalupe bass.			12	No limit
Bass, striped, its hybrids, and subspecies.	5 (in aggregate)	15 (in aggregate)	18	No limit
Bass, white [and yellow bass].	25 [(in aggregate)]	50 [(in aggregate)]	10	No limit
[Bass, white]			[10]	[No limit]
[Bass, yellow]			[No limit]	[No limit]
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in aggregate)	50 (in aggregate)	9	No limit
Catfish, flathead.	5	10	24 [9]	No limit
Catfish, gafftopsail.	No limit	No limit	14	No limit
Cobia.	2	4 [2]	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in aggregate)	50 (in aggregate)	10	No limit
Drum, black.	5	10	14	30
Drum, red.	3	6	20	28
Flounder: all species, their hybrids, and subspecies.	20	40	12	No limit
Jewfish.	0	0		
Mackerel, king.	2	4 [2]	14	No limit

Species	Daily Bag	Possession	Minimum Length (Inches)	Maximum Length (Inches)
Mackerel, Spanish.	7 [3]	14 [3]	14	No limit
Marlin, blue.	No limit	No limit	114	No limit
Marlin, white.	No limit	No limit	81	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.				
Pompano, Florida.	No limit	No limit	9	No limit
Sailfish.	No limit	No limit	76	No limit
Seatrout, spotted.	10	20	15	No limit
Shark: all species, their hybrids, and subspecies.	5 (in aggregate)	10 [5] (in aggregate)	No limit	No limit
Sheepshead.	5	10	12	No limit
Snapper, lane.	No limit	No limit	8	No limit
Snapper, red.	7	14 [7]	13	No limit
Snapper, vermilion.	No limit	No limit	8	No limit
Snook.	3	6	20	28
Tarpon.	0	0		Catch and release only.
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in aggregate)	10 (in aggregate)	No limit	No limit
Walleye.	5	10	16	No limit

(B) Exceptions to Statewide daily bag, possession, and length limits shall be as follows:

(i) For licensed chartered vessels the bag [and possession] limit is two king mackerel per person per **day** [trip] for all persons on board, or three king mackerel per **person** [angler] per **day** [trip] exclusive of captain and crew, whichever is greater.

(ii)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth and smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lakes Toledo Bend (Newton, Sabine and Shelby) and Caddo (Marion and Harrison).	8 (in aggregate)	14	
Bass: Largemouth and smallmouth, their hybrids and subspecies.			
Lakes Brownwood (Brown) and Coleman (Coleman).	_3 (in aggregate)_	_16_	
Lakes Fairfield (Freestone), [Joe Pool (Dallas, Ellis, and Tarrant),] Bastrop (Bastrop), San Augustine City (San Augustine), Ray Roberts (Denton, Cooke, and Grayson), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), Raven (Walker), _Madisonville (Madison), Bright (Williamson),_ and Cooper (Delta and Hopkins).	3 (in aggregate)	18	
Lake Braunig (Bexar).	2 (in aggregate)	21	
Nelson Park Lake (Taylor), Buck Lake (Kimble), [Purtis Creek State Park Lake (Henderson and Van Zandt),] Calliham State Park Lake (McMullen), and in all waters in the Lost Maples State Natural Area (Bandera).	0 (in aggregate)	No Limit	Catch and release only.
Lake Texoma (Cooke and Grayson).	5 (in aggregate)	14	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Purtis Creek State Park Lake (Henderson).	0	No Limit	Catch and release only except that any bass over 22 inches in length may be retained in a live well or other aerated holding device and immediately transported to the Park weigh station. After weighing, the bass must be released immediately back into the lake or donated to the Lone Star Lunker Program.
Lakes Pinkston (Shelby), [and] Waxahachie (Ellis), and Burke-Crenshaw (Harris).	3 (in aggregate)	14-18 Inch Slot Limit	It is unlawful to retain largemouth and smallmouth bass between 14 and 18 inches in length.
Lakes Fayette County (Fayette), Houston County (Houston), Nacogdoches (Nacogdoches), Fork (Wood, Rains and Hopkins), Monticello (Titus), Mill Creek (Van Zandt) Joe Pool (Dallas, Ellis, and Tarrant) and Gibbons Creek (Grimes).	3 (in aggregate)	14-21 Inch Slot Limit	It is unlawful to retain largemouth and smallmouth bass between 14 and 21 inches in length.
Bass: smallmouth.			
Lake Meredith (Hutchinson, Moore ,and Potter).	3	12-15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: striped, its hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5 (in aggregate)	No Limit	No more than 2 over 30 inches in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in aggregate)	No Limit	No more than 1 over 20 inches in length may be retained each day. Striped bass caught and placed on a

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
			stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
<u>Bass, white.</u>			
<u>Lakes Conroe (Montgomery and Walker), Livingston (Polk, San Jacinto, Trinity and Walker), Limestone (Leon, Limestone, and Robertson), Palestine (Anderson, Cherokee, Henderson and Smith), and Somerville (Burleson, Lee and Washington), The West Fork San Jacinto River (Walker), Trinity River below lock and dam near Highway 7 (Leon, Houston, Trinity and Walker), Navasota River between Lakes Limestone and Mexia (Limestone), East Yegua Creek (Burleson, Lee and Milam), Middle Yegua Creek (Lee), and Yegua Creek (Burleson and Washington).</u>	<u>25</u>	<u>12</u>	
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lakes Canyon (Comal), <u>Choke Canyon (Live Oak and McMullen),</u> Conroe (Montgomery and Walker), <u>Cooper (Delta and Hopkins), Fairfield (Freestone),</u> Lewisville (Denton), Meredith (Hutchinson, Moore and Potter), <u>O. H. Ivie (Coleman, Concho, and Runnels),</u> Palestine (Cherokee, Anderson, Henderson and Smith), and Whitney (Hill, Bosque and Johnson).	15 (in aggregate)	14	

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Bastrop (Bastrop), Bright (Williamson), Burke-Crenshaw (Harris), Nelson Park Lake (Taylor) and in reservoirs lying totally within the boundaries of a state park.	5 (in aggregate)	14	
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in aggregate)	9	The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
[Catfish, flathead.]			
[Lake Texoma (Cooke and Grayson) and Lake Bastrop (Bastrop).]	[5]	[24]	
Crappie: black and white crappie, their hybrids and subspecies.			
Caddo Lake (Marion and Harrison) and Lake Toledo Bend (Newton, Sabine, and Shelby).	50	No Limit	
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in aggregate)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Choke Canyon (Live Oak and McMullen).	15	10	
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Tradinghouse Creek (McLennan).	3	20	No maximum size limit.
Shad: gizzard and threadfin shad.			

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
The Trinity River below Lake Livingston between Polk and San Jacinto Counties.	500 (in aggregate)	No Limit	Possession Limit 1,000 in aggregate.
Sunfish: Bluegill, redear, green, warmouth, and longear sunfish, their hybrids and subspecies.			
Purtis Creek State Park Lake (Henderson and Van Zandt).	25 (in aggregate)	7	

(iii) Bag and possession limits for black drum, sheepshead, and flounder do not apply to the holder of a valid commercial finfish fisherman's license.

(c) Freshwater devices, means, and methods.

(1) (No change.)

(2) It is unlawful for any person to take, attempt take fish caught by any device means, or method other than as authorized in these rules.

(A) (No change.)

(B) Trotline. Nongame fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline. It is unlawful for any person to use a trotline:

(i)-(vi) (No change.)

(vii) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Fayette power project cooling pond in Fayette County, Pinkston Reservoir in Shelby County, **Lake Burke-Crenshaw in Harris County, and Bright Lake in Williamson County,** or in reservoirs 500 acres or less lying totally within boundaries of a state park.

(C) Jugline. Nongame fish, channel catfish, blue catfish and flathead catfish, may be taken with a jugline. It is unlawful for any person to use a jugline in Lake Bastrop in Bastrop County, **Lake Burke-Crenshaw in Harris County and Bright Lake in Williamson County.**

(D) Throwline. Nongame fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline. It is unlawful for any person to use a throwline in Lake Bastrop in Bastrop County, **Lake Burke-Crenshaw in Harris County, and Bright Lake in Williamson County.**

(E) Shad trawl. Nongame fish only[, to be used for bait only,] may be taken with a shad trawl. It is unlawful for any person to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter. A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(F) Seine. Nongame fish only[, to be used for bait only,] may be taken with a seine [except that carp, buffalo, freshwater drum, and tilapia may be taken for any purpose]. It is unlawful for any person to use a seine:

(i)-(iii) (No change.)

(G) Dip net. It is unlawful for any person to use a dip net except:

(i) (No change.)

(ii) to take nongame fish [with a dip net not exceeding 210 square inches within the frame, a bag depth not exceeding four inches, or with mesh exceeding 1/8-inch square].

(H) Cast net. Nongame fish only[, to be used for bait only,] may be taken with a cast net [except that carp, buffalo, freshwater drum, and tilapia may be taken for any purpose]. It is unlawful for any person to use a cast net exceeding 14 feet in diameter.

(I) Minnow trap. Nongame fish only[, to be used for bait only,] may be taken with a minnow trap. It is unlawful for any person to use a minnow trap exceeding 24 inches in length or with a throat larger than one by three inches.

(J) (No change.)

(K) Umbrella net. Nongame fish only[, to be used for bait only,] may be taken with an umbrella net. It is unlawful for any person to use an umbrella net with the area within the frame exceeding 16 square feet.

(L)-(M) (No change.)

(N) Gill nets, trammel nets, and hoop nets.

***(i)* It is unlawful for any person to use gill nets, trammel nets, or hoop nets in the public freshwaters of**

this state without a permit in compliance with §§57.377-57.386 of this title (relating to Permits to Sell Nongame Fish Taken from Public Freshwater).

(ii)[(i)] It is unlawful for any person to use gill nets, trammel nets, or hoop nets in the freshwaters of this state except that (**clause (II) of this subparagraph expires on September 1, 1993).**[:]

(I) Nongame fish only may be taken in the following rivers and streams, exclusive of tributaries:

(-a-) the Angelina River from U.S. Highway 84 in Rusk County to the Texas Eastern Transmission Company pipeline above Sam Rayburn Reservoir;

(-b-) the Attoyac River (Bayou) from U.S. Highway 84 in Rusk County to Cottonham Crossing above Sam Rayburn Reservoir;

(-c-) the Brazos River from State Highway 7 in Falls County to IH 10 in Austin County;

(-d-) the Navasota River from State Highway 7 in Robertson County to its confluence with the Brazos River;

(-e-) the Neches River from State Highway 294 in Cherokee County to U.S. Highway 69 in Jasper County and from F.M. Road 1013 in Jasper County to IH 10 in Jefferson County;

(-f-) the Sabine River from Lake Tawakoni Dam to U.S. Highway 80 in Van Zandt County and from State Highway 63 in Newton County to Sabine Lake;

(-g-) the San Antonio River and Coleto Creek (exclusive of Coleto Creek Reservoir) in Goliad and Victoria Counties;

(-h-) the San Bernard River between Austin and Colorado Counties; and

(-i-) Yegua Creek from Somerville Dam to its confluence with the Brazos River.

(II) Nongame fish only may be taken in all freshwaters of Dimmit, Gillespie, Liberty, and Zavala Counties and in all fresh waters of Jefferson and Orange Counties, except those eastward of State Highway 347 and southward of IH 10.

(iii)[(ii)] It is unlawful for any person:

(I) while using a gill net, trammel net or hoop net to have in his possession fish, other than those species permitted for that device;

(II) to use gill nets or trammel nets exceeding 1,800 feet in length, in any one operation;

(III) to use gill nets, trammel nets, or hoop nets without valid gear tags attached within three feet of each end of the net;

(IV) to use gill nets or hoop nets with mesh less than three inches square; or

(V) to use trammel nets with mesh on any wall less than three inches square.

(d) Saltwater devices, means, and methods.

(1) (No change.)

(2) Only the following means and methods may be used for taking fish:

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

(C) Trotlines.

(i)-(ii) (No change.)

(iii) No person may retain or possess red drum, **sharks,** or spotted seatrout caught on a trotline other than a sail line.

(iv)-(xiii) (No change.)

(D) (No change.)

(e) (No change.)

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

Issued in Austin, Texas, on February 14, 1992.

TRD-9202357

Paul M Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Earliest possible date of adoption: March 27, 1992

For further information, please call: 1 (800) 792-1112, ext 4974 or (512) 389-4974

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TITLE 40. Social Services and Assistance

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

In-home and Family Support Program

• 40 TAC §48.2703

The Texas Department of Human Services (DHS) proposes an amendment to §48. 2703, concerning the In-home and Family Support Program, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to revise the copayment schedule based on updated state median income figures compiled by the United States Department of Health and Human Services.

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 government 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 an equitable copayment system which reflects the family's ability to pay. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Linda Lamb at (512) 450-3199 in DHS's Community Care Section. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-037, 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 authorizes the department to administer public and medical assistance programs.

§48.2703. Income Eligibility.

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

(d) Copayments are figured according to the following table:

In-home and Family Support Program
Income Copayment Schedule

*Percent (%) Copay:		10%	20%	30%	40%	50%
Family Size	Median Income	105% of Median	110% of Median	115% of Median	120% of Median	125% of Median
1	$18,189	$19,098	$20,008	$20,917	$21,827	$22,736
2	23,785	24,974	26,164	27,353	28,542	29,731
3	29,382	30,851	32,320	33,789	35,258	36,728
4	34,978	36,727	38,476	40,225	41,974	43,723
5	40,574	42,603	44,631	46,660	48,689	50,718
6	46,171	48,480	50,788	53,097	55,405	57,714
Maximum Copayment Amount	0	$ 720	$ 1,440	$ 2,160	$ 2,880	$ 3,600

*Percent % Copay:	60%	70%	80%	90%	100%
Family Size	130% of Median	135% of Median	140% of Median	145% of Median	150% of Median
1	$23,646	$24,555	$25,465	$26,374	$27,284
2	30,921	32,110	33,299	34,488	35,678
3	38,197	39,666	41,135	42,604	44,073
4	45,471	47,220	48,969	50,718	52,467
5	52,746	54,775	56,804	58,832	60,861
6	60,022	62,331	64,639	66,948	69,257
Maximum Copayment Amount	$ 4,320	$ 5,040	$ 5,760	$ 6,480	$ 7,200

NOTE: For families larger than six, add three percentage points for each additional family member to 132% (which is the factor for a family of six) and multiply the new percentage by the State Median Income (SMI) for a family of four. Example: A family of seven (one additional member): 3% + 132% = 135% X $34,978 (SMI for family of four) = $47,220.

[Copayments are figured according to the following table:

*Percent (%) Copay:		10%	20%	30%	40%	50%
Family Size	Median Income	105% of Median	110% of Median	115% of Median	120% of Median	125% of Median
1	$18,346	$19,263	$20,181	$21,098	$22,015	$22,933
2	23,990	25,189	26,389	27,589	28,788	29,988
3	29,365	30,833	32,302	33,770	35,238	36,706
4	35,280	37,044	38,808	40,572	42,336	44,100
5	40,925	42,971	45,018	47,064	49,110	51,156
6	46,570	48,898	51,227	53,556	55,884	58,213

NOTE: For families larger than six, add three percentage points for each additional family member to 132% (which is the factor for a family of six) and multiply the new percentage by the State Median Income (SMI) for a family of four. Example: A family of seven (one additional member): 3% + 132% = 135% X $35,280 (SMI for family of four) = $47,628.

Maximum Copayment Amount	0	$ 720	$ 1,440	$ 2,160	$ 2,880	$ 3,600

*Percent % Copay:	60%	70%	80%	90%	100%
Family Size	130% of Median	135% of Median	140% of Median	145% of Median	150% of Median
1	$23,850	$24,767	$25,684	$26,602	$27,519
2	31,187	32,387	33,586	34,786	35,985
3	38,175	39,643	41,111	42.579	44,048
4	45,864	47,628	49,392	51,156	52,920
5	53,203	55,249	57,295	59,341	61,388
6	60,541	62,870	65,198	67,527	69,855
Maximum Copayment Amount	$ 4,320	$ 5,040	$ 5,760	$ 6,480	$ 7,200]

(e)-(i) (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 February 19, 1992.

TRD-9202482

Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: May 1, 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 filling or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

- **4 TAC §28.8**

The Texas Department of Agriculture has withdrawn from consideration for permanent adoption a proposed amendement to §28.8 which appeared in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7686). The effective date of this withdrawal is February 18, 1992.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202426 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: February 18, 1992

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

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rate Design

- **§23.23**

The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption a proposed amendment to §23.23 which appeared in the September 10, 1991, issue of the *Texas Register* (16 TexReg 4916). The effective date of this withdrawal is February 19, 1992.

Issued in Austin, Texas, on February 19, 1992.

TRD-9202563 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Effective date: February 19, 1992

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

Customer Service and Protection

- **§23.53**

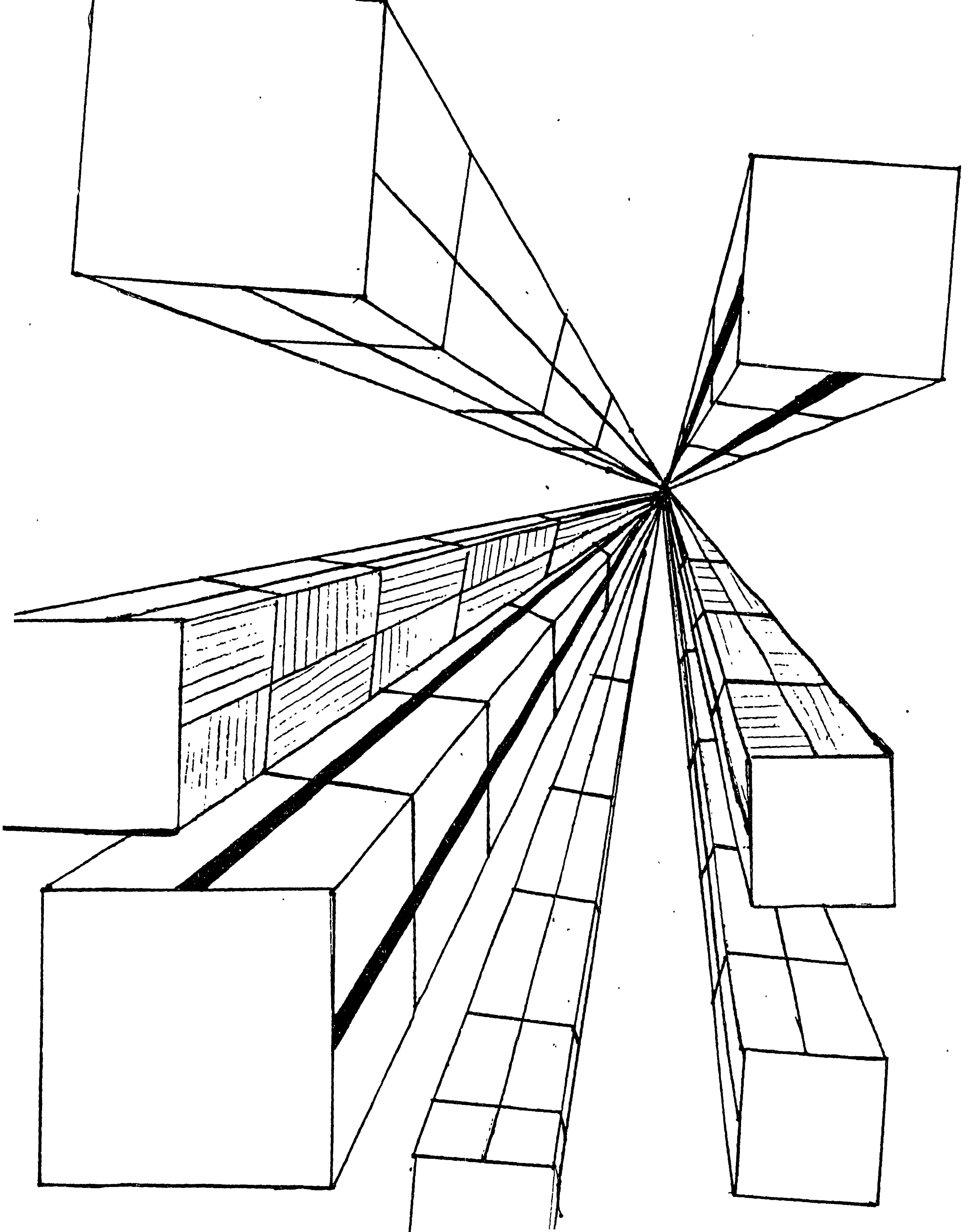
The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption a proposed amendment to §23.53 which appeared in the September 10, 1991, issue of the *Texas Register* (16 TexReg 4919). The effective date of this withdrawal is February 19, 1992.

Issued in Austin, Texas, on February 19, 1992.

TRD-9202562 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Effective date: February 19, 1992

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



Name: Eric Mittenthal

Grade: 5

School: Lake Highlands Elementary, Richardson ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

• 4 TAC §§28.1-28.7, 28.9, 28.10, 28.13

The Texas Department of Agriculture adopts amendments to §§28.1-28.7, 28. 9, 28.10, and 28.13, concerning procedures for participation in the Texas Agricultural Finance Authority (TAFA) Loan Guaranty Program. Section 28.10 is adopted with changes to the proposed text as published in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7685). Sections 28.1-28.7, 28.9, and 28.13 are adopted without changes and will not be republished.

The sections are amended to generally clarify existing procedures, add some new application requirements to facilitate screening of applicants by the TAFA Board and the Credit Review Committee, and restructure the Credit Review Committee. Section 28.10 is adopted with a change to correct a publication error. In the publication of proposed amendments to this section, the amount of the application fee was omitted. The section, as adopted, includes the $100 fee amount.

The sections, as amended, clarify existing definitions, eliminate the requirement that a fee for photocopying must accompany a request for copies of records, clarify that correspondence to the program should be directed to the TAFA authority, clarify what monies are to be included in the fund, and eliminate exceptions to the $2 million limit on a loan guaranty. In addition, the sections establish preference for applicants that are Texas corporations with majority ownership by Texans, require disclosure of real or potential conflict of interest of applicant, require that the loan guaranty fee is to be paid within 30 days of closing, provide that legal fees are to be paid by applicant, and require that the lender notify the authority in the event of any breach or default.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code Annotated, §58. 023, which provides the TAFA Board of Directors with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFA Loan Guaranty Program; and §58.022, which provides the board with the authority to adopt rules and procedures for administration of the TAFA Loan Guaranty Program.

§28.10. General Terms and Conditions of the Texas Agricultural Finance Authority's Financial Commitment.

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

(c) Maximum amount of loan guaranty. The Authority shall not provide a loan guaranty to an applicant, including its affiliates, that at any one time, exceeds $2 million. The assistance in the form of a loan guaranty shall not exceed 90% of the total loan.

(d)-(e) (No change.)

(f) Maturity. The maturity of the loan guaranty approved by the Authority must not exceed the useful life of the collateral and may be negotiated between the Authority and the lender.

(g) (No change.)

(h) Fees. The board shall adopt a fee schedule which can be used to calculate the loan guaranty fee payable by the applicant to the Authority within 30 days of closing. A nonrefundable application fee will be required in the amount of $100 with the application. If the application is approved, the application fee will be considered as part of the loan guaranty fee. Any and all legal fees incurred by the board in issuing a guarantee or participating in any loan will be an obligation of the applicant.

(i) Closing the loan guaranty. The lender, the applicant, and the commissioner of agriculture or his designee may attend the verification and signing of the closing documents as prepared by staff and the lender at the date, time, and location determined by the Authority.

(j) Reporting requirements.

(1) The lender shall report in writing to the Authority as follows:

(A) notification if the loan is placed on a watch list;

(B) quarterly monitoring reports indicating loan balance, repayment status, and any credit changes reported to lender as indicated on the prescribed form; and

(C) notification in the event of any breaches or defaults in the terms, conditions, or covenants of the note, loan agreement, or other loan documents.

(2) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202425 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: March 10, 1992

Proposal publication date: December 27, 1992

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

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Chapter 30. Young Farmers Endowment Program

• 4 TAC §§30.1-30.12

The Texas Department of Agriculture adopts new §§30.1-30.12, concerning procedures for participation in the Texas Agricultural Finance Authority (TAFA) Young Farmer Endowment Program. Sections 30.3, 30.6, 30.9, and 30.10 are adopted with changes to the proposed text as published in the December 17, 1991, issue of the *Texas Register* (16 TexReg 7297). Sections 30.1, 30.2, 30.4, 30.5, 30.7, 30.8, 30.11, and 30.12 are adopted without changes and will not be republished.

The new sections provide procedures for participation in the TAFA Young Farmers Endowment Program. Section 30.3 is adopted with changes. The definition of "eligible borrower" has been changed based on comments received from the Farm Credit Bank of Texas to clarify that more than four years' experience does not make one an ineligible borrower. In addition, the Future Farmers of America (FFA) has been added to this definition by the TAFA board as an example of a vocational agriculture program that counts towards practical farm or ranch experience, and language has been added by the TAFA board to clarify when the application cycles end.

The definition of "first farm or ranch operation" has been changed at subparagraph (C) to increase the requirement for the maximum amount of adjusted gross income that can come from farming or ranching for each of the four years preceding application from 15% to 20%. This change was made based on public comments received stating that the 15% requirement would disqualify many otherwise eligible young farmers who had over the 15% income requirement, but did not have a full scale farming or ranching operation.

Section 30.6 is adopted with changes. Subsection (b) has been changed by the TAFA board to clarify who may assist in staff review of a plan submitted by an applicant. Subsection (e) has been changed by the TAFA board to provide that notice of future consideration of an application will include designation of the cycle during which the application will be considered. In addition, based on comments received from the Farm Credit Bank of Texas, subsection (e) has been changed to clarify that an applicant may apply during any future application cycle.

Section 30.9 is adopted with changes. Subsection (g) has been added to clarify that the program will be providing an interest free loan. This change was made based on comments received from the Farm Credit Bank of Texas. Section 30.10 is adopted with changes and has been changed by the TAFA board to clarify that financial and cash flow statements are to be provided every six months.

The new sections provide a general statement of the authority and purpose of the Young Farmers Endowment Program. In addition, the new sections provide definitions, general project eligibility requirements, application requirements and procedures for filing of applications, general terms and conditions of TAFA's financial commitment, and criteria for approval of a loan under the program.

Several comments were received that were not incorporated into the sections as adopted. Two comments were received from individuals regarding §30.4(4) and the requirement for a 20% equity injection into the operation. Those commenting expressed concern that this requirement cannot be met by first-time farmers and ranchers. The TAFA board disagrees with these comments and believes that the 20% requirement is realistic.

Three comments were received from individuals regarding §30.12(5) and the collateral requirement for a loan. Those commenting expressed concern that the first-time farmer or rancher would have a difficult time accumulating collateral for the loan. The TAFA board disagrees with these comments and believes that collateral must be obtained for the loan.

In addition to the comments previously discussed, other general comments and inquiries regarding the proposed sections were received from the public. The Texas Agricultural Cooperative Council submitted general comments regarding the continuity of the program and concerns as to whether the program would be able to maintain a consistency of operation from year to year. The department and the TAFA Board agrees that the program must be standardized and be consistent over time in its application in order to preserve the intent of the legislation, which is to assist young, first-time farmers and to bring more young, qualified individuals into the agricultural sector.

Several comments were received from individuals concerning some provisions of the proposed sections which are required by the statutory authority establishing the program. These comments are: that the program does not provide sufficient financing and will therefore have a limited impact; that the age limitation of 40 years for eligible borrowers will eliminate many otherwise eligible first time farmers; and that the $5.00 fee that will provide revenue for the program combined with the proof of insurance requirement for each vehicle in order to get license plate tags renewed adds to the already too heavy tax burden of farmers. While the TAFA board does not necessarily disagree with all of these comments, changes on these specific provisions cannot be made by the board through the rulemaking process, but rather, must be made through the legislative process with amendments to the statutory authority for the program.

The new sections are adopted under the authority of the Texas Agriculture Code (the Code), §253.004, which provides the Board of Directors of the Texas Agricultural Finance Authority the same authority in administering the Young Farmers Endowment Program as it has in the Code; Chapter 58; the Code, §58.023, which provides the TAFA board with the authority to adopt rules to establish criteria for eligibility of applicants and criteria for lenders; and §58.022, which provides the TAFA board with the authority to adopt rules and procedures for administration of the loan guaranty program.

§30.3. Definitions. In addition to the definitions set out in the Texas Agriculture Code, §253.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Act–The Young Farmer Endowment Act, Texas Agriculture Code, Chapter 253.

Agricultural science teacher–An individual employed by a Texas school district for the purpose of teaching agricultural science and technology.

Applicant–An individual making application for financial assistance under the Act and this chapter.

County agent–A county extension agent or agricultural program leader employed by the Texas Agricultural Extension Service.

Credit review committee–A committee composed of three members of the Texas Agricultural Finance Authority, with two members being appointed by the chairman of the board and one member being the commissioner of agriculture or his designee.

District-based agricultural economist–A district agricultural economist employed by the Texas Agricultural Extension Service.

Eligible borrower–An individual who is at least 18 years of age but younger than 40 years of age and who has a minimum of four years of practical farm or ranch experience, with not more than two years of participation in a 4-H, Future Farmers of America (FFA), or vocational agriculture program counting as practical farm or ranch experience. The eligible borrower must remain younger than 40 throughout the application cycle for which the applicant has applied; such cycles end on the first Monday in February and on the first Monday in August of each year.

First farm or ranch operation–An operation:

(A) in which the owner/operator provides the management and labor for the operation;

(B) where the owner/operator provides or directly arranges for the financing of the operation; and

(C) where the owner/operator has not generated more than 20% of his adjusted gross income during each of the past four years from farming or ranching operations, provided that an exception will be allowed from the income limitation for those applicants who provide evidence that during the last four years, their taxable income from farming or ranching provided their education costs.

Plan–A complete business plan which includes balance sheets, income statements, cash flow statements, and a management plan.

Program–The Young Farmer Endowment Program.

§30.6. Filing Requirements and Consideration of Applications.

(a) Application forms. An applicant seeking financing must use application forms approved and distributed by the Authority and must include all information requested.

(b) Staff review. Upon submission of a full and complete application, the staff shall review the application, evaluate the technical and market feasibility of the project, and examine the benefits of the project for the economic growth of Texas agriculture. The staff may request and consider comments of the county agent or the agricultural science teacher who reviewed the plan. The district-based agricultural economist may be requested to provide assistance in reviewing the plan.

(c) Credit review committee. The staff shall submit a credit memorandum to the credit review committee for each of the top 50 ranked applications. The credit review committee shall recommend to the board applications sufficient to award available funds. Any application not receiving a unanimous vote of the credit review committee will be recommended to the board for denial. The board will approve or deny applications by majority vote and may impose terms and conditions as part of its approval.

(d) Notification of approval. Upon approval by the board, the staff will notify each applicant in writing identifying the terms and conditions of the approval. The staff shall prepare or cause to be prepared all written agreements and documents necessary to close the financing in accordance with the terms and conditions set forth in the notice of approval.

(e) Denial of application. The staff will notify each applicant in writing of the denial of an application. Such notice will indicate whether the application will or will not be considered further under the program. Should an applicant be notified that his or her application will be considered further, such notice shall designate the loan cycle for such consideration. No appeal of the board's decision regarding an application will be allowed. Those applications not included in the 50 submitted to the credit review committee will not be considered further under the program. Applicants not considered further by the board may reapply for consideration during any future application cycle.

(f) Providing false information. An applicant who knowingly provides false information in an application shall be disqualified from obtaining a loan under the program and shall be liable to the Authority and the department for any expense incurred by the Authority or the department as a result of the falsity and any approved loan will be considered in default.

§30.9. General Terms and Conditions of Authority's Financial Commitment.

(a) Maximum amount of financial commitment. The Authority shall provide up to $50,000 in financial assistance to an approved applicant, to be disbursed according to the approved draw schedule.

(b) Security. Financial commitments approved under this program must be secured by a first lien on collateral of a type and value which, when considered with other criteria, in the judgment of the board affords reasonable assurance of repayment of the loan.

(c) Closing of the loan. The closing documents for an approved loan recipient shall be prepared and approved by an attorney. The applicant and the commissioner of agriculture or his designee may attend the verification and signing of such closing documents at the time, date, and location determined by staff.

(d) Closing costs. All closing costs associated with the closing of an approved application shall be the liability of the applicant.

(e) Draw approval. All requests for draws for the approved financing must be taken with 90 days of the proposed date of draw submitted with the application. Extensions of the 90-day period may be approved by the board by requesting such in writing and upon the receipt of an approval confirmation from the board.

(f) Maturity. The maturity of an approved loan must not exceed 15 years unless extended by the board.

(g) Interest rate. The interest rate for the loan will be 0% for the term of the loan.

§30.10. Reporting Requirements. Each recipient of a loan under this program shall provide bi-annual (every six months) financial and cash flow statements to the authority. Such statements must be presented in comparison with the budget information contained in the 10-year business plan submitted to the Authority with the application. Failure to provide such statements shall be considered a default on the loan and constitute grounds for demand for full and immediate repayment of the loan.

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 February 18, 1992.

TRD-9202424 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: March 10, 1992

Proposal publication date: December 17, 1991

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

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Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.2

The Texas Animal Health Commission adopts an amendment to §35.2 concerning general requirements, without changes to the proposed text as published in the November 5, 1991, issue of the *Texas Register* (16 TexReg 6251).

The amendment is necessary to provide the public with the option of using forms other than a Form 4-33 as a recognized test document for cattle entering a livestock market.

All test-eligible cattle must be tested at the market unless they are accompanied by a test document approved by the commission, such as Forms 4-33, 4-54 or a health certificate showing the cattle were tested within 30 days prior to coming to the market.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to protect livestock in the state from disease.

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 February 14, 1992.

TRD-9202436 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: March 15, 1992

Proposal publication date: November 5, 1991

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

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Chapter 51. Interstate Shows and Fairs

• 4 TAC §51.1

The Texas Animal Health Commission adopts an amendment to §51.1, concerning definitions, without changes to the proposed text as published in the November 5, 1991, issue of the *Texas Register* (16 TexReg 6251).

The amendment is necessary to clarify the definition of an "interstate"- "intrastate" show, fair, or exhibition.

An interstate show, fair or exhibition is one where livestock and poultry from other states entering a Texas show, fair, or exhibition are held in common facilities with Texas origin in livestock and poultry of the same species. An intrastate show, fair, or exhibition is one where Texas livestock and poultry entering a show, fair or exhibition are housed and exhibited separate and apart from livestock and poultry of the same species which have entered from out-of-state.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to protect livestock in the state from disease.

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 February 14, 1992.

TRD-9202435 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: March 15, 1992

Proposal publication date: November 5, 1991

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

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• 4 TAC §51.2

The Texas Animal Health Commission adopts an amendment to §51.2, concerning general requirements, without changes to the proposed text as published in the November 5, 1991, issue of the *Texas Register* (16 TexReg 6251).

The amendment is necessary to clarify the intent for entry of other livestock and poultry of in-state origin into show, fairs, and exhibitions.

Livestock and poultry of in-state origin entering interstate shows, fairs, and exhibitions must meet the same requirements as those entering from out-of-state and must be accompanied by a certificate of veterinary inspection.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to protect livestock in the state from disease.

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 February 14, 1992

TRD-9202434 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: March 15, 1992

Proposal publication date: November 5, 1991

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

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Chapter 59. General Practice and Procedures

• 4 TAC §59.2

The Texas Animal Health Commission adopts an amendment to §59.2, concerning general responsibilities, without changes to the proposed text as published in the November 5, 1991, issue of the *Texas Register* (16 TexReg 6252).

The amendment is necessary to provide the public an opportunity to comment before the commission.

At least twice a year the public may make comments at a commission meeting on any issue under the commission's jurisdiction.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provide the commission with authority to protect livestock in the state from disease.

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 February 14, 1992.

TRD-9202433 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: March 15, 1992

Proposal publication date: November 5, 1991

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

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 21. Practice and Procedure

Docketing and Notice

• 16 TAC §21.24

The Public Utility Commission of Texas adopts an amendment to §21.24, concerning the contents for notice in licensing proceedings, with changes to the proposed text as published in the September 10, 1991, issue of the *Texas Register* (16 TexReg 4915).

Section 21.24(c)(1) as amended will eliminate the requirement that applicants for a certificate of convenience and necessity (CCN) publish a map of the area for which the certificate is being requested. Additionally, pursuant to new subsection (c)(4), the intervention deadline for proceedings under subsection (c) (1) will be 60 days after completion of the published notice required under paragraph (1) or the landowner notice required under paragraph (3), whichever is later.

Section 21.24(c)(2) as amended will require applicants, before or upon filing an application, to provide a copy of the map required in §21.24(c)(3) to all cities and neighboring utilities providing the same utility service within five miles of the requested territory or facility. Applicants will also be required to notify county governments in all counties in which any portion of the proposed facility or requested territory is located. Additionally, before final approval of modifications in an applicant's proposed route(s), applicant must provide notice to cities, neighboring utilities, and county governments which have not already received such notice.

Section 21.24(c)(3) as adopted will require an applicant's notice to be more detailed. The notice to directly affected landowners must include a clear description of the area for which the certificate is being requested. This description must refer to geographic landmarks, municipal and county boundary lines streets, roads, highways, and any other readily identifiable points of reference. Applicants will also be required to provide to directly affected landowners either a map of the entire proposed route or maps on a county-specific basis. For example, if a proposed facility were to be located in both Travis and Williamson Counties, an applicant choosing to provide county- specific maps will be required to furnish two maps. Directly affected landowners (as defined in §21.24(c)(3)) in Travis County would receive a map which clearly and conspicuously illustrated the preferred and any alternative sites of the proposed facility located in Travis County. Directly affected landowners in Williamson County would receive a map which illustrated the preferred and alternative sites of the facility to be located in Williamson County. Finally, the commission adopts minor wording modifications to subsection (c)(3) for purposes of clarification.

As noted previously, the commission has added new subsection (c)(4) to clarify the intervention deadline in electric certificate proceedings described under subsection (c). As a result of the addition of new subsection (c)(4), current subsection (c)(4) has been renumbered as subsection (c)(5).

The commission also adopts amendments to subsection (d) concerning the notice by applicants for new electric generating plants. As currently written, subsection (d) requires applicants for new electric generating plants to provide the identical notice required under subsection (c)(1). The notice in subsection (c)(1) is tailored to electric transmission line applications and is not entirely appropriate for either Notice of Intent (NOI) proceedings or certificate applications for new electric generating plants. Therefore, subsection (d) as amended sets forth the notice requirements for both NOI proceedings and certificate proceedings for new generating plants. Subsection (d) (1) lists the notice requirements for an NOI application while subsection (d)(2) sets forth the notice requirements for certificate applications for new generating plants. The requirements under paragraphs (1) and (2) are identical except that late invervention for good cause is not contemplated in proceedings under subsection (d)(2). Additionally, the commission has added new subsection (d)(3) to permit the commission to order that notice be provided to other affected persons or agencies.

Finally, subsection (d) as amended also eliminates the requirement of providing a map to directly affected landowners. Instead, the applicant's notice must identify the type of facility in general terms, including at least the site (if known), the fuel to be used, basic technol-

ogy, size of plant and the estimated service date, and the estimated expense associated with the project.

Finally, the commission has added new subsection (e) which sets forth the notice requirements for telephone licensing proceedings, except for minor boundary changes. The issues developed in telephone certificate proceedings differ from those confronted in electric certificate cases. To avoid confusion, the commission has decided to segregate the notice requirements for telephone certificate cases from those for electric cases. Subsection (e) requires applicants to publish notice of the application for two consecutive weeks. The intervention deadline for cases under subsection (e) will be 60 days from the final publication of public notice. Applicants will also be required to furnish notice to cities, neighboring utilities, and county governments.

Comments on the proposed amendments were received from Central and Southwest Services, Inc., Consumers Union; Houston Lighting & Power Company, Office of Public Utility Counsel, Southwestern Bell Telephone Company, Southwestern Public Service Company; Texas Electric Cooperatives, Inc ; and Texas Utilities Electric Company

Central and South West Services, Inc supported the proposed amendments and urged the commission to adopt the rule as published.

Consumers Union (CU) opposed elimination of the requirement of a map in the published notice in certificate proceedings. CU contended that the general public is interested in the location of new transmission lines or facilities and should be provided the same notice given to affected landowners. The commission disagrees with this suggestion. The commission does not intend through these amendments to exclude the public from participation in certificate proceedings. On the contrary, the rule as adopted represents a substantial improvement in the quality of notice provided to the general public. As amended §21.24 will require a detailed description of the proposed facility in the published notice. The commission believes that the published notice, together with the notice requirements for affected landowners, is sufficient to inform interested persons of proposed transmission lines or facilities.

CU also opposed the elimination of site information in §21.24(d). As stated in §23.31 (relating to certification criteria), selection of a specific determined in an NOI proceeding, but instead is addressed in the subsequent certification proceeding However, if site information is known at the NOI stage this can and should be included in the published notice. The commission has added language to subsection (d)(1) to require inclusion of site information, if known.

Finally, CU objected to the reduction in time for intervention in Notice of Intent proceedings from 60 to 15 days. CU contends 15 days is too short a time for intervention. CU suggested an intervention deadline of 45 days. CU further noted that under the rule as proposed, it is impossible to determine a precise deadline because it is tied to the final date of publication of the published notice. The commission agrees in part with these comments. The commission acknowledges that a 15-day intervention deadline may be unrealistically short. The commission has therefore changed the intervention deadline in NOI proceedings to 30 days. This should provide sufficient time for interested parties to intervene. Parties wishing to intervene after the 30-day deadline may do so on a showing of good cause and, if permitted to intervene, must take the proceeding as they find it. The commission agrees that under subsection (d) as proposed, the intervention date is not directly discernible from the notice alone. However, interested parties reading the published notice will know that the deadline will be no sooner than 30 days from the date of that notice. Additionally, any interested person may call either the commission or the utility contact listed in the notice to ascertain the precise intervention deadline. Finally, late intervention for good cause shown will also be permitted under the rule as amended. Given these considerations, the commission finds it unnecessary to alter this aspect of §21.24.

Finally, CU supported the language requiring the notice to state the type of facility involved and the estimated cost of the project.

Houston Lighting & Power Company (HL&P) supported the proposal and offered no changes to the rule as published.

The Office of Public Utility Counsel (OPC) noted its preference for maps in the published notice in certification proceedings, but did not object to the elimination of the maps provided the description was sufficiently inform normal readers of the location of the project. The commission believes the rule as adopted will accomplish these objectives.

Like CU, OPC objected to the shortening of the intervention deadline for NOI proceedings on the basis that the proposed 15-day deadline is too short a time for the public at large to respond. OPC further noted that the rule should be designed to encourage rather than discourage intervention. OPC maintained there should be no time limit on intervention in NOI proceedings. OPC requested that the present 60-day intervention deadline be retained, but in the alternative proposed a 45-day deadline for full participation in NOI proceedings. OPC observed that under the Texas Rules of Civil Procedure, timeliness is not an issue in intervention, unless it is raised by other parties. As previously discussed, the commission agrees that a 15-day intervention could prove unduly short and for that reason has adopted a 30-day intervention deadline for NOI proceedings. In establishing a 30-day intervention deadline the commission has attempted to balance the right of the public to be adequately informed of a pending NOI application, and the commission's statutory obligation to process such applications within 180 days.

OPC suggested language which would have permitted full intervention (subject to challenges for good cause) within 60 days. Intervention after the 60-day deadline would be permitted on a good cause showing with the rights of such parties being decided on a case-by-case basis. The commission disagrees with this proposed change. The commission is confident that a 30-day intervention deadline will provide adequate opportunity for interested parties to be apprised of the proceeding and exercise their right to intervene. The commission further believes that the good cause standard as stated in the proposal will protect the rights of prospective intervenors who fail to intervene within the 30-day deadline. The good cause standard will also prevent untimely, warrantless intervention which could prejudice the rights of timely intervenors.

Finally, OPC suggested that the description of the proposed plant include the type of fuel to be used, and the proposed technology as well as the size and estimated service date of the proposed facility. The commission agrees with this suggestion and has added this language to both subsection (d)(1) and (2).

Southwestern Bell Telephone made suggestions intended to clarify that the proposed amendments to §21.24(c) apply only to electric utilities. The commission agrees in principle with this suggestion. The issues in telephone and electric certificate cases are significantly different. Additionally, current subsection (c)(1), (2), and (4), though tailored to electric CCNs, also apply to telephone certificate applications. In recognition of these factors, the commission has decided to segregate the notice requirements for telephone and electric certificate cases. Under §21.24 as adopted, subsections (c) and (d) pertain to electric proceedings while subsection (e) applies to telephone certificate applications.

Southwestern Public Service Company (SPS) supported elimination of the requirement for maps in the published notice under §21.24(c)(1). However, SPS suggested that the benefit of furnishing maps of proposed facilities to cities, neighboring utilities, and county governments was questionable and recommended deleting this requirement. SPS contended that the detailed description required under §21.24(c)(1) would be sufficient to inform these entities of certificate proceedings. The commission believes that providing maps to cities, neighboring utilities, and county governments is a valuable means of informing these entities of a pending certificate proceeding and has therefore retained this requirement under the rule as adopted. The additional cost to utilities should not be unreasonable since they are required to furnish such maps to affected landowners anyway under subsection (c)(3).

SPS supported the requirement of providing affected landowners a map of the proposed facility, but noted that the cost of providing county-specific maps as required under §21.24(c)(3) was considerable. SPS requested that this cost be recognized and not be written off as "minimal." The cost of providing county-specific maps obviously will vary, but the commission recognizes that in larger projects the costs of this requirement could be substantial. However, as discussed following, the commission has made the provision of county-specific maps optional This should at least partially alleviate the cost concerns expressed by SPS.

Texas Electric Cooperatives (TEC) commented that the amendments as proposed fail to disclose the breadth of the commis-

sion's authority in certificate proceedings. TEC suggested language which would require an applicant's notice to describe only the preferred route chosen by the utility. TEC asserted that maps or written descriptions describing alternative locations should not be required

TEC is correct in observing that the commission may consider routes other than the preferred route chosen by the utility. The commission, however, disagrees with TEC's suggested language. The applicant should provide appropriate notice of all locations examined by the commission including all routes proposed in the application and any others considered. Requiring notice of the preferred and alternative routes proposed in the application is fair and equitable as the commission will consider all such routes before making a final decision. If the commission considers a location which was not proposed in the utility's application, the applicant must provide notice as specified under §21.24(c)(2) and (3), to affected landowners, cities, neighboring utilities, and county governments along the proposed route before a final determination on the application can be made.

TEC also expressed concern that the notice required under §21.24(c)(1) must describe all conceivable routes of the proposed facility, regardless of how absurd, in order to be effective. The commission disagrees with this interpretation of the rule. The rule as amended, is intended to insure that the public and interested parties are made aware of all routes proposed by the utility and/or considered by the commission.

TEC also suggested that in certain instances a written description would be clearer than a map. TEC suggested that utilities be given the right to choose which form of notice would be most effective. The commission believes such an ad hoc approach to notice is inappropriate. TEC's proposal would, in all likelihood, lead to debates over the form of notice provided. To the extent possible, notice requirements should be consistent. Moreover, the commission believes that maps are a valuable and effective means of notifying interested persons of certificate applications. Under subsection (c) as adopted, applicants will be required to provide the same form of notice (except as noted following regarding county-specific maps) which should eliminate second guessing regarding the effectiveness of the notice provided.

Finally, Texas Utilities Electric Company (TU Electric), like TEC, suggested that applicants only be required to provide notice of the preferred route of the proposed facility. TU Electric contended that requiring notice of all alternative routes would be difficult in proceedings in which a number of alternatives were being considered. TU Electric suggested that the notice in such cases might actually confuse the public. While the commission is not unsympathetic to this point, it believes the benefits of providing adequate notice of all routes considered outweighs this concern. For reasons previously discussed in connection with similar concerns expressed by TEC, the commission has retained the requirement of providing notice of both preferred and alternative routes.

Regarding §21.24(c)(3), TU Electric suggested that utilities not be required to provide county-specific maps. TU Electric contended that it furnishes affected landowners with a map of the entire proposed route which, the company urged, is typically more beneficial than providing county-specific maps. TU Electric noted that in instances in which only a small portion of a proposed line traverses a particular county, a county-specific map would less useful than a map of the entire proposed route. TU Electric suggested that utilities be given the option of providing maps of the entire proposed route(s) or county-specific maps. The commission's goal in proposing county-specific maps was to insure that directly affected landowners are provided sufficient notice of certificate proceedings. However, the commission believes TU Electric's proposal is reasonable and has added language to subsection (c)(3) to incorporate this suggestion. The commission stresses that applicants should choose the type of map which will provide the clearest and most effective notice to interested persons. Finally, TU Electric supported the proposed amendments to §21.24(d).

The commission also received oral comments from an individual concerning this proposal. The individual observed that it was not entirely clear what length of published notice was required for CCN applications for a new generating plant. The individual noted that subsection (d) as proposed could be read to require four weeks published notice for a CCN application for new generating plants. The commission believes this point is well taken and has therefore amended subsection (d) to clarify the notice required in NOI and certificate applications for new generating plants. The amendments to this subsection are intended to eliminate further confusion regarding the notice requirements for generating plant applications (both NOI and certificate) which differ from the notice requirements for transmission line applications. The commission believes fairness dictates that notice for a CCN for a new generating plant should be the same as that for the NOI proceeding. Therefore, under subsection (d) as adopted, published notice for both NOI applications and CCN applications for new generating plants will be four weeks. Finally, for reasons previously discussed, the intervention deadline for NOI proceedings will be 30 days while the intervention for CCN proceedings involving a new generating plant will be 60 days.

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16(a) which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§21.24. Contents of Notice for Licensing Proceedings.

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

(c) Applicant notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes and notice of intent and certificate proceedings for new electric generating plants, the applicant shall give notice in the following ways.

(1) Applicant shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the application is filed with the commission, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall further describe in clear, precise language the area for which the certificate is being requested and the location of the preferred and alternative routes of the facility proposed in the application. This description should refer to area landmarks, including, but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference. The notice shall also include the following statement: Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256 or (512) 458-0221 for the telecommunications device for the deaf. The deadline for intervention in the proceeding will be no sooner than 60 days after the date of this notice. Proof of publication in the form of publisher affidavit(s) shall be submitted to the commission as soon as available. The affidavit(s) shall state with specificity each county in which the newspaper is of general circulation.

(2) Applicant shall, upon or before filing an application, also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection and a map which clearly and conspicuously illustrates the location of the area for which the certificate is being requested, including the preferred and any alternative locations of the proposed facility, to cities and neighboring utilities providing the same utility service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice provided to county government(s) shall be identical to that provided to cities and neighboring utilities. Before final approval of any modification in the applicant's proposed route(s), applicant must provide notice as required under this paragraph to cities, neighboring utilities, and county gov-

ernments who have not already received such notice.

(3) Applicant shall, upon or before filing an application, mail notice of its application to the owners of land (as stated on the current county tax roll(s)) who would be directly affected by the requested certificate, including the preferred and any alternative location of the proposed facility. The notice must contain all information required in paragraph (1) of this subsection, a clear and conspicuous statement that the owner's land will be directly affected if the certificate is granted and a map which clearly and conspicuously illustrates the preferred and any alternative locations of the facility proposed in the application. Applicants may provide either a map of the entire proposed route or maps on a respective county basis as circumstances warrant. Before final approval of any modification in the applicant's proposed route(s), applicant must provide notice as required under this paragraph to all directly affected landowners who have not already received such notice. For the purposes of this paragraph, land is directly affected if an easement would be obtained over all or a portion of it or if it contains a habitable structure that would be within 200 feet of the proposed facility. Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). Upon the filing of such proof, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied.

(4) For purposes of this subsection, the intervention deadline will be 60 days after final publication of the published notice required in paragraph (1) of this subsection or the date notice is mailed to directly affected landowners as required in paragraph (3) of this subsection, whichever is later.

(5) The commission may require the applicant to mail or deliver notice to other affected persons or agencies.

(d) Notice by applicants for new electric generating plant. Those planning to apply for a certificate of convenience and necessity for a new electric generating plant must file a notice of such intent with the commission pursuant to the Act, §54(d). Applicants for new electric generating plants shall give notice in the following ways.

(1) Applicants for a Notice of Intent must provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant will be located, and in each county containing territory served by the utility, once each week for four consecutive weeks beginning with the week after the notice of intent is filed with the commission. This notice shall identify the site of the facility (if known). This notice shall further identify in general terms the type of facility, including at a minimum the fuel to be used, basic technology, size of the plant and estimated service date, and the estimated expense associated with the project. The notice shall also include the following statement: Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission Public Information Office at (512) 458-0256, or 458-0221 for the telecommunications device for the deaf. The deadline for intervention in the proceeding will be 30 days after the final publication of this notice. Exceptions to the intervention deadline may be granted upon a showing of good cause. Proof of publication in the form of a publisher affidavit(s) shall be submitted to the commission as soon as available. The affidavit(s) shall state with specificity each county in which the newspaper is of general circulation.

(2) Applicants for a certificate of convenience and necessity for a new electric generating plant must provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant will be located, and in each in county containing territory served by the utility, once each week for four consecutive weeks beginning with the week after the application is filed with the commission. This notice shall contain the same information as required in paragraph (1) of this subsection with the exception of the language pertaining to late intervention for good cause. Proof of publication in the form of publisher affidavit(s) shall be submitted to the commission as soon as available. The affidavit(s) shall state with specificity each county in which the newspaper is of general circulation.

(3) The commission may require the applicant to mail or deliver notice to other affected persons or agencies.

(e) Applicant notice in telephone certificate proceedings. In all telephone certificate proceedings, except minor boundary changes, the applicant shall give notice in the following ways.

(1) Applicant shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the type of facility if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. The notice shall also include the following statement: Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 for the telecommunications device for the deaf. The deadline for intervention in the proceeding will be 60 days after the final publication of this notice. Proof of publication in the form of publisher affidavit(s) shall be submitted to the commission as soon as available. The affidavit(s) shall state with specificity each county in which the newspaper is of general circulation.

(2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and neighboring utilities.

(3) The commission may require the applicant to mail or deliver notice to other affected persons or agencies.

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 February 18, 1992.

TRD-9202458

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

Effective date: March 10, 1992

Proposal publication date. September 10, 1991

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

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Miscellaneous

• 16 TAC §21.182

The Public Utility Commission of Texas adopts an amendment to §21.182, concerning setting of utility assessment, without changes to the proposed text published in the October 25, 1991, issue of the *Texas Register* (16 TexReg 5941).

The amendment provides a process by which the commission adjusts the assessment provided under Texas Civil Statutes, Article 1446c, §78.

Comments were received from Office of Public Utility Counsel (OPC), and AT&T Communications of the Southwest, Inc. (AT&T). All of the comments were reviewed by the commission staff.

OPC recommended that the commission take no further action on this proposal until the legality of the commission's proposal designated under 23.5 is established. Section 23.5 provides a mechanism to adjust utility rates after the assessment under Texas Civil Statutes, Article 1446c, §78 is changed and the comptroller of public accounts notifies the utility of the change. OPC had recommended that the commission seek an attorney general opinion on the legality of the proposed §23.5. The commission has confidence in the legality of its proposals. Furthermore, an attorney general's opinion would not be determinative of the legality of the proposal.

AT&T commented that the rule should be modified to provide that the commission sets the assessment no more than once a year. The commission disagrees. Changes in the commission's and the office of public utility counsel's budgets seldom occur more often than once every two years, let alone more than once per year. Furthermore, the only way that the commission could ensure that the assessment will be sufficient, as required by §78, is to adjust it after there are budget changes.

The new section is adopted under Texas Civil Statutes, Article 1446c, §16(a) , 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.

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 February 18, 1992.

TRD-9202491 Mary Ross McDonald
Secretary
Public Utility Commission

Effective date: August 17, 1992

Proposal publication date: October 25, 1991

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

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Chapter 23. Substantive Rules

General Rules

• 16 TAC §23.5

The Public Utility Commission of Texas adopts new §23.5, concerning Public Utility Commission assessment, with changes to the proposed text as published in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5762).

The amendment provides a mechanism to adjust utility rates in an expedited manner if the commission adjusts the assessment provided under the Public Utility Regulatory Act (PURA), §78, Texas Civil Statutes, Article 1446c (Supplement 1991).

Some of the comments received during the comment period opposed the adoption of the proposed amendment. Nearly all of the comments suggested clarifications and revisions. Each of the comments is discussed following.

Comments were received from Texas Utilities Electric Company (TU Electric), El Paso Electric Company (EPEC), Southwestern Public Service Company (SPS), Office of Public Utility Counsel (OPC), GTE Southwest Incorporated and Contel of Texas (the GTE Companies), Texas Statewide Telephone Cooperative, Inc. (TSTCI), Centel, AT&T Communications of the Southwest, Inc. (AT&T), Texas Telephone Association (TTA), Sprint, MCI Telecommunications Corporation (MCI), and Central Telephone Company of Texas, who concurred in the comments filed by TTA.

All of the comments were reviewed by the commission staff.

SPS commented that the proposed amendment contradicts the Act in that it makes a §43 filing mandatory while such filings are solely in the discretion of the utility under the Act. The commission agrees with the comment and the proposed amendment has been changed to recognize that §43 proceedings are voluntary and that §42 proceedings are the mechanism to change a utility's rates when it does not volunteer to do so.

SPS also commented that the proposed amendment would cause a costly onslaught of rate cases under §43 and suggested instead that a "tax adjustment clause" be structured so as to not violate the Act, §43(g). EPEC also suggested that the commission may want to treat taxes in the same manner as it does fuel. TTA also commented that the rule would cause an enormous administrative burden of rate cases. The commission is unaware of any authority under the Act which would allow the suggested adjustment clause or to treat taxes in the same manner as fuel. As for the cost of the proceedings caused by this rule, the commission disagrees in part Although there will be additional cost involved with a greater number of cases, the commission believes that such cases could, by and large, be handled in an expeditious manner

TTA commented that the rule would mandate the revising of tariffs which has a cost and that the rule does not specify whether each tariff sheet would have to be changed or just an additional sheet added. The commission recognizes that tariff changes will be necessary and that such changes have a cost, but does not believe this calls for rejecting the rule. The commission does not desire to limit the utilities' flexibility in making tariff changes by specifying how the tariff change is to be made.

EPEC suggested that it was inappropriate to adjust a utility's rates in response to a change in a single cost of service item. Similarly, TSTCI commented that many of the small telephone companies that it represents have not had rate cases and therefore do not have rates in which the Public Utility Commission assessment has been explicitly included. It is suggested that such utilities be exempted from the requirement that they file a §43 rate case. Although the mandate to file a §43 rate case has been removed from the amendment, the amendment still mandates a change in the rates of the utility. The commission assumes that the gist of TSTCI's comment is against mandating a change in rates in response to a change in the rate of assessment. That being stated, the commission disagrees with TSTCI's and EPEC's comments. The utility should be indifferent to this process. The goal of the adjustment is to reflect changes in the amount of assessment that the utility is paying. If the comptroller starts collecting a lesser amount, the utility is put in no worse position than it was before when it has to adjust its rates to reflect the lesser cost. The commission does recognize, as discussed following, that a utility or any party has the right to raise any issue in a rate proceeding that is relevant to the reasonableness of the utility's rates.

Sprint stated that they were unaware of any need to begin adjusting the assessment now. Section 78 empowers the commission to adjust the assessment, and because it has not been done in the past is no reason to not start now.

TU Electric pointed out that for electric utilities, the retention of original jurisdiction by the cities makes it impossible to effectuate the rule's goal-the expeditious pass-through of any change in the assessment. The commission agrees that this hampers the commission's ability to pass-through changes in the assessment, but does not believe that this calls for rejection of the rule The commission can still adjust utility rates in areas where it has original jurisdiction.

The GTE Companies commented that the proposal should be modified to clarify that if a hearing is held in response to a request for a hearing, that the hearing be "limited to the impact of the assessment adjustment on the utility's cost of service." TU Electric made a similar comment and also suggested that the filings be limited to changes in the assessment. In a similar vein, EPEC objected to allowing an affected person the right to request a hearing and noted a hearing would cause additional cost. AT&T expressed similar problems with the provision allowing for a hearing and suggested that there be minimum standards that must be met before a hearing is granted, that the hearing should be limited to the assessment, and that the hearing should be held no later than 60 days after the filing. TTA also suggested that discovery and the scope of the proceeding should be limited. Although the limitation on the scope of the hearing suggested by the GTE Companies, TU Electric, AT&T, and TTA would be desirable, the commission is not authorized to limit the scope of a general rate proceeding to one issue. The commission only has the authority granted to it by the legislature, and the legislature has authorized the commission to change the rates of a utility only after a general rate proceeding or other narrowly limited situations that are not applicable here. See for example Texas Civil Statutes, Article

1446c, §43(g) and §43(j). In a general rate proceeding, which this by necessity must be, the commission must consider any issue relating to the reasonableness of rates that is raised by the parties because the commission is charged to set just and reasonable rates that allow the utility to recover its reasonable and necessary operating expenses and provide an opportunity to earn a reasonable return on invested capital. The goal of the rule is to allow the adjustment of utility rates in an expeditious manner to reflect changes in the assessment, but the process must be within the bounds of the commission's jurisdiction. Given that the scope of the issues can be greatly expanded by the parties, the commission does not believe that AT&T's suggestion that a hearing be held in 60 days is advisable.

In a similar vein, OPC expressed concern over whether the mechanism provided in the rule was legal in that it could be considered piecemeal ratemaking and suggested that an attorney general's opinion be sought first. As discussed previously, the commission recognizes that a process that adjusts utility rates for a single cost of service item could be challenged as being piecemeal. The intent of the proposal was to set up a process that would entice cooperation in making the adjustment by making it rather expeditious. The commission is aware of the bounds of its jurisdiction and does not believe an attorney general's opinion would be useful.

OPC also commented that the rule should specify the allocation among the classes. TTA commented that the rule does not identify the customer base, the method to calculate the change in rates, nor the particular rates or services targeted. The commission believes that it is unnecessary to specify these matters in the rule. Because the assessment is a percentage of receipts from the ultimate consumer and it has been collected for many years already, it should be relatively straightforward to adjust the rates. If problems arise they will probably be limited to particular utilities and thus should be addressed on a case-by-case basis.

TTA also commented that the rule does not address how the assessment should be remitted when billing or collection services are performed. The commission is at a loss as to how the rule has any impact on the manner of collection; the commission believes this is a matter for the comptroller of public accounts to address.

TTA commented that the rule should specify an amount of time after the comptroller of public accounts notifies the utility of a change in assessment for the utility to file a proceeding. Such a deadline has merit, but the commission prefers to allow the utilities to have flexibility. If over time it becomes apparent that a deadline is necessary to prevent abuse, the commission can make an amendment to put in a deadline.

TTA raised questions about the term "gross receipt" used in subsection (b) of the proposal. Because that part has been reworded and the phrase is no longer in the rule, the comment is moot.

AT&T recommended that the rule allow the passthrough of the costs associated with complying with the rule as well as any changes in the assessment. The commission disagrees. The change in the assessment should be subject to little factual dispute, but the reasonableness of the cost incurred to comply may be subject to a great deal of dispute.

AT&T recommended that special accommodation be made in the rule for proprietary information. The commission finds this unnecessary. The commission recognizes privileges, but it is the burden of party that is claiming the privilege to establish that the privilege exists.

AT&T suggested adding a provision that modeled after §23.25(d). Given the nature of the subject of this proposal, that is, an adjustment in taxes that impacts all utilities by the same percentage, the commission sees no merit in affording different treatment for AT&T. Furthermore, the thresholds and time limits in the suggested language are too great.

TU Electric commented that the term "rate" as used in subsection (a), wherein it is required that the utility state in a conspicuous manner the rate of the assessment, could be interpreted to mean either the dollar amount that the individual customer pays or the percentage of the gross receipts that is applicable. TTA made a similar comment and suggested that separately listing an adjustment on the customer's bill would be costly, confusing, and create controversy. TU Electric suggested defining the term. AT&T suggested that the rule should require one consistent phrase and further suggested that it be "PUC ASSESS. RATE is .05%." Sprint commented that the statement required could be expensive and would not serve any purpose. Sprint stated that the statement in the preamble that there would be no cost for compliance is incorrect, because of the cost to place the statement on the bill. If the statement is required, Sprint suggested that the rule be clarified to eliminate any confusion in regard to what is required by IXCs, and Sprint offered some language. The commission believes that each of these comments has at least some merit, and the rule has been changed in response to them. The commission's intent was to require a statement somewhere on the bill of the percentage of gross receipts that was applicable. The commission did not intend for the amount applicable to each bill be listed and labeled. While the commission recognizes that there is cost associated with the statement, the commission believes that cost is outweighed by value of getting the information to the consumers. The change made to the amendment uses Sprint's language in combination with the definition proposed by TU Electric.

There were a number of comments in regard to subsection (b). MCI and Sprint commented that the language should be clarified in recognition that the commission does not have rate jurisdiction over non-dominant IXCs. This has been done. AT&T suggested that filings not be required for *de minimus* changes. The commission disagrees and believes that any changes should be passed through.

Both TTA and TU Electric suggested that the reference to 2.0% in subsection (c) be changed so that it is consistent with Texas Civil Statutes, Article 1446c, §43(b). That section defines major rate cases as increases in aggregate revenues more than the greater of 2.5% or $100,000. This has been done by removing the reference to 2.0% and simply referring to §43(b).

A number of other minor wording changes have been made to the proposed amendment to further clarify the intent and meaning.

The new section is adopted under Texas Civil Statutes, Article 1446c, §16(a) , 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.

§23.5. Public Utility Commission Assessment.

(a) The percentage of the utility's gross receipts that is the basis for the assessment being collected by the Comptroller of Public Accounts of the State of Texas shall be stated in a conspicuous manner on the customer's utility bill. The statement shall be amended whenever the comptroller notifies the utility that a different rate is being assessed.

(b) Upon notification by the comptroller of a change in the assessment, each utility that is subject to the commission's rate setting jurisdiction may file a proceeding under Texas Civil Statutes, Article 1446c, §43, to adjust rates to account for the change in the assessment unless the utility already has a proceeding pending before the commission in which the change in the assessment may be addressed. If a utility fails to file a proceeding, the commission shall initiate a proceeding pursuant to Texas Civil Statutes, Article 1446c, §42.

(c) If the only cost of service adjustment that the utility requests in its application is the adjustment to the assessment and if the request is not a major rate change under Texas Civil Statutes, Article 1446c, §43(b), the limitation on the request shall constitute good cause under §43(b) to allow the rate to go into effect prior to the expiration of 35 days; however, the rate shall not go into effect prior to the effective date of the change in the rate of assessment.

(d) If the only cost of service adjustment that the utility requests in its application is the adjustment to the assessment, the limitation on the request shall constitute good cause under §21.69(d) of this title (relating to Applications, Testimony, and Exhibits) for the waiver of the requirement that the utility file a rate filing package. In such case, the utility shall file testimony and calculations detailing the manner in which the adjustment to rates is being calculated to account for the change in the assessment.

(e) If the only cost of service adjustment that the utility requests in its application is the adjustment to the assessment and an affected person requests a hearing, a hearing shall be held and the case processed on an expedited basis.

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 February 18, 1992.

TRD-9202492 Mary Ross McDonald
Secretary
Public Utility Commission

Effective date: August 17, 1992

Proposal publication date: October 18, 1991

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

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Licensed Real Estate Inspectors

• 22 TAC §535.220

The Texas Real Estate Commission adopts new §535.220, concerning professional conduct and ethics for real estate inspectors, without changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7435).

Adoption of the new section is necessary for the commission to establish guidelines for professional conduct and ethics for real estate inspectors. The new section provides minimum guidelines for an inspector to follow when dealing with clients, the public, other inspectors, and other professionals and related tradesmen. The new section was developed by the Texas Real Estate Inspector Committee, an advisory committee of inspectors appointed by the commission.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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 February 12, 1992.

TRD-9202349 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective date: March 6, 1992

Proposal publication date: December 20, 1991

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 15. Surplus Lines of Insurance

Subchapter A. General Regulation of Surplus Lines Insurance

• 28 TAC §§15.2, 15.7, 15.8, 15.11-15.15, 15.19, 15.21, 15.25-15.27, 15.101

The State Board of Insurance of the Texas Department of Insurance adopts amendments to §§15.2, 15.7, 15.8, 15.11-15.15, 15.19, 15.21, 15.25-15.27, and 15.101, concerning the regulation of surplus lines insurance, without changes to the proposed text as published in the November 29, 1991, issue of the *Texas Register* (16 TexReg 6906).

The amendments are necessary to inform surplus lines agents on the manner to set up premium tax trust accounts, eliminate references to investigations by the Surplus Lines Stamping Office of Texas since that entity is no longer involved, clarify the intent of the sections, eliminate redundant provisions, and change the organization of the Board of Directors for the Surplus Lines Stamping Office of Texas to a nine-member board as required by House Bill 2, 72nd Legislature, 1991.

The amendments to §§15.2, 15.7, 15.8, 15.11-15.15, 15.19, 15.21, and 15.25-15.27 clarify the conditions regarding refusal and denial of a license, the stamping fee is set by the board, where to obtain forms and responsibility for copying forms, filing semiannual tax report, reporting of unauthorized insurance, the location of specified language, and the correct agency name for the deposit of tax monies. The amendments also eliminate provisions regarding investigations by the Surplus Lines Stamping Office of Texas, since that office is no longer involved in investigations. The amendments clarify the intention of the sections and eliminate redundant provisions. The amendment of §15.101 incorporates the changes to the Insurance Code, Article 1.14-2, occasioned by the passage of House Bill 2 into law during the 72nd Legislature regarding the organization of the Board of Directors of the Surplus Lines Stamping Office of Texas, which requires a nine-member board with four members representing the general public.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Insurance Code, Articles 1.04 and 1.14-2. Article 1.04 authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. Article 1.14-2, §3A, provides that the Texas Department of Insurance may promulgate rules to enforce Article 1.14-2, and provides that the Texas Department of Insurance shall monitor the activities of surplus lines agents to the extent necessary to protect the public interest.

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 February 19, 1992.

TRD-9202502 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: March 11, 1992

Proposal publication date: November 29, 1991

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

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Chapter 19. Agents Licensing

Subchapter I. Licensing Fees

• 28 TAC §19.801, §19.802

The State Board of Insurance of the Texas Department of Insurance adopts new §19.801 and §19.802. Section 19.802 is adopted with one change to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6414). Section 19.801 is adopted without changes and will not be republished.

The new sections concern procedures and requirements relating to licensing fees for various insurance agents, title agents, escrow officers, title attorneys and direct operations; insurance adjusters, life insurance counselors, risk manager, health maintenance organization agents, prepaid legal services agents and reinsurance intermediaries The sections are necessary to defray administrative costs by establishing new fees for original applications, renewals, and appointments, and to provide readily accessible information regarding fees for various types of licenses. The sections also increase efficiency by simplifying the renewal of multiple licenses held by one license. Multiple licenses will be renewed at the same time.

Section 19.801 sets forth general provisions allowing for the setting of expiration dates for multiple licenses, defines a completed

application, and provides instructions for the submission of fees for licenses and appointments, and renewal of licenses. The section also provides that the original application fee must be submitted at the time of filing of the application for license and that the fee is fully earned at the time of application and shall not be reduced for any reason. Section 19.802 specifies the fees for each type of license.

Commenting for the sections was the Texas Association of Life Underwriters. Commenting against §19.802 as it relates to fees for reinsurance intermediaries was Long, Burner, Parks & Sealy representing four Texas domiciled reinsurance intermediaries.

One association stated that it is committed to the protection of the insurance-buying public and takes the position that adequate licensing requirements and fees play an important role in the enhancement of professional sales and services rendered by agents, and unanimously endorses the rules to increase agent licensing fees. Another commenter stated that the proposed fee for reinsurance intermediaries of $4,616 was almost 100 times greater than the highest fee set for any other license. The commenter also noted that the fee could not be justified as necessary to cover the cost of the licensing program because the only costs were the application and renewal of the license. If, the commenter noted, the staff were proposing that this fee covers the costs of the program, such costs were illegal and were particularly unnecessary for brokers because the only other portion of the licensing program was the review of contracts, etc. required by the statute for managers and only managers should bear those costs. The commenter also pointed out that the costs involved would not be just the licensing costs in Texas as other states would charge Texas intermediaries retaliatory fees based upon the Texas proposed fees. The commenter urged that the fee be set for brokers intermediaries commensurate with the cost of licensing only.

The board agrees with the comments that the fees overall should be increased. The board responds to the comments that the fee for reinsurance intermediaries was too high as follows: The fees in other areas are generally set at or near the statutory maximum where there is such a maximum. Those fees are not necessarily commensurate with the c[illegible]s of the program administration, but are the highest fees which can be set by law. The fees proposed for reinsurance intermediaries were proposed to cover the costs of the entire reinsurance intermediary licensing program as the costs of reviewing the contracts are legitimate costs of that program and are an integral part of the licensing process. If a contract is found to be in violation of the statute, the actions taken as a result will of necessity be actions involving the license of the particular entity involved. The statute appears to contemplate that charges for the licensing program shall be borne by both brokers and managers as the statute provides that the "board shall collect a nonrefundable licensing fee from each reinsurance intermediary who applies for an original or renewal license in this state." The stature does not distinguish between fees for brokers and those for managers. The statute does provide that the fees shall be set in "amounts that are reasonable and necessary to cover the costs of the licensing program." It also provides that the fees "shall be used to enforce this article." The board is of the opinion that the fees should cover the reinsurance intermediaries licensing program in all its aspects and should be set for both brokers and managers so that all reinsurance intermediaries would share equally in the costs of the program as a whole; however, the board is sensitive to the need to avoid retaliatory fees in other states and to allow Texas entities to be competitive on an interstate basis. The board therefore, has reduced the licensing fee for reinsurance intermediaries to $500, for both the application and renewal fees. This change occurs in §19.802(b)(21).

The new sections are adopted under the Texas Insurance Code, Article 1.04, which authorizes the State Board of Insurance to issue rules in accordance with the laws of this state, and under the following articles of the Texas Insurance Code, which authorize the board to determine the amount of fees for various types of licenses, namely: Article 1.14-2, §4 (surplus lines agent); Article 3. 75, §7 (variable contract agent); Article 9.36 (title insurance agent); Articles 9.42-9.43 (title escrow officer); Article 9.56 §6 (title attorney); Article 9.36A (direct operation); Article 20A.15 (health maintenance organization agent); Article 20A.15A (health maintenance organization agent for single health care service plans); Article 21.07 (Group II insurance agent); Article 21.07-1 (Group I legal reserve life insurance agent); Article 21.07-2 (life insurance counselor); Article 21.07-3 (managing general agent); Article 21. 07-4 (insurance adjuster); Article 21.11 (non-resident property and casualty agent); Article 21.14 (local recording agent and solicitor); Article 21.14-1 (risk manager); Article 21.14-2 (agricultural agent); Article 23.23 (prepaid legal services agent); and Article 21.07-7 (reinsurance intermediary).

§19.802. Amounts of Fees.

(a) With each application for original license or renewal, notice of appointment, or request for qualifying examination, the applicant or licensee shall submit the amount shown in this section. The fees for qualifying examinations and reexaminations only apply if the Texas Department of Insurance does not contract with a testing service for the provisions of these examinations.

(b) The amounts of fees are as follows:

(1) Group I, legal reserve life insurance agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20;

(E) in addition to the original application fee listed in Subparagraph (A) of this paragraph, an application filing fee for a temporary license, of $100;

(2) Group II insurance agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$50;

(E) in addition to the original application fee listed in subparagraph (A) of this paragraph, an application filing fee for a temporary license, of $100;

(3) health maintenance organization agent (basic health care plan):

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20.

(4) health maintenance organization agent (single health care service plan):

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(5) insurance adjuster:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$50;

(6) insurance adjuster (emergency license): original application–$20;

(7) local recording agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$16;

(D) qualifying re-examination–$50;

(8) solicitor:

(A) original application–$20;

(B) renewal–$18;

(C) qualifying re-examination–$20;

(D) appointment of a currently licensed solicitor–$10;

(9) managing general agent:

(A) original application–$30;

(B) renewal–$48;

(C) additional appointment–$10;

(10) prepaid legal:

(A) original application–$50;

(B) renewal–$48;

(C) sdditional appointment–$10;

(D) qualifying examination–$20;

(11) surplus lines agent:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$20;

(12) title insurance agent:

(A) original application–$50;

(B) renewal–$48;

(13) title insurance escrow officer:

(A) original application–$50;

(B) renewal–$48;

(14) title attorney:

(A) original application–$50;

(B) renewal–$48;

(15) direct operation license:

(A) original application–$50;

(B) renewal–$48;

(16) variable contract agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(17) risk manager:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$50;

(18) agricultural agent:

(A) original application–$50;

(B) renewal–$50;

(19) life insurance counselor:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying Examination–$20;

(20) nonresident property and casualty agent:

(A) original application–$50;

(B) renewal–$48;

(21) reinsurance intermediary:

(A) original application–$500;

(B) renewal–$500.

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 February 19, 1992.

TRD-9202504 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: March 11, 1992

Proposal publication date: November 8, 1991

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 63. Administration

Nonprofit Organizations

- **31 TAC §§63.21, 63.23, 63.25, 63.27**

The Texas Parks and Wildlife Commission adopts new §§63.21, 63.23, 63.25, and 63.27 concerning nonprofit organizations with changes to the proposed text as published in the November 5, 1991, issue of the *Texas Register* (16 TexReg 6276).

Legislation enacted in 1984 requires the adoption of rules governing the relationship between nonprofit organizations and state agencies when nonprofits supporting a particular agency exist. The development of new support organizations which fit the statutory categories necessitates promulgation of these rules.

As a result of the comments received, the staff determined that an additional six organizations fit the definition of closely related organization. These six have been added to §63.23(b). The section on acceptance of gifts of under $1, 000, §63.25(a)(1), was modified to give the executive director increased flexibility in delegating the acceptance of these gifts.

The adopted section will function to permit the department to define standards of conduct for state employees involved with nonprofits, to create uniform contracts provisions, and to establish some guidance in the acceptance of gifts.

In addition to the publication of these rules in the *Texas Register*, a draft was sent to 238 organizations that had been identified by staff from all divisions as having made prior donations. Of these, 66 responded with copies of their organizational documents. The vast majority of these simply provided the documentation, without comment. A few organizations commented that they did not feel the rules applied to them, and staff concurred.

Names of those making comments against the section were Washington on the Brazos State Park Association; San Jacinto Museum of History Association; The Texas Wildlife Association; and Southwestern Cattleraiser's Association.

A representative of Washington-on-the-Brazos State Park Association stated that his organization did not fit the definition of closely related, but the organizational documents of the organization do meet the definition of "closely related".

San Jacinto Museum of History Association replied that it was not closely related, but did not send the documentation requested so that agency staff could make an independent assessment;.they were not added to the list at this time.

The Texas Wildlife Association has been determined to not be closely related; they commented that we should raise the dollar values in the acceptance of gifts by a factor of five. These values reflect a consensus by public lands staff and also reflect current internal policies of the agency.

The Southwestern Cattleraiser's Association refused to provide documentation, but staff agreed that they are not a closely related organization. They commented that the gift acceptance should be by the commission rather than the executive director; however, the Parks and Wildlife Code specifies executive director and the commission cannot make a rule which contradicts the statute.

The new sections are adopted under the authority of Texas Civil Statutes, Articles 6352-11f and 6252-13a.

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

Closely related nonprofit organization–A legally incorporated or otherwise associated nonprofit organization whose sole purpose is to benefit the department, its component facilities, or research and other activities within those component facilities, which is administered by a board of directors independent from the control and supervision of the commission.

Commission–The Texas Parks and Wildlife Commission.

Department–Texas Parks and Wildlife Department and all of its component facilities.

Donor–A person as defined in the Government Code, §311. 005(2) other than a closely related organization, which from time to time may make contributions to the department.

Executive Director–Executive director of the department.

Improvement–A permanent addition to department held real property which is in the nature of a fixture, that is a chattel or other construction which is attached to the real estate and which becomes part of it upon attachment.

Gift–Donation of money or property other than volunteer time.

§63.23. Closely Related Nonprofit Organizations.

(a) The department will maintain a list of closely related nonprofit organizations and periodically update said list.

(b) The following organizations have been identified as closely related:

(1) Parks and Wildlife Foundation of Texas, Inc;

(2) Operation Share a Lone Star Lunker, Inc;

(3) Washington-on-the-Brazos State Park Association;

(4) Kreische Brewery Docent Organization;

(5) Admiral Nimitz Foundation;

(6) Mission Tejas State Park Association;

(7) Brazos Bend State Park Volunteer Organization;

(8) Fulton Mansion Docent Organization.

(c) Funds accepted by closely related nonprofit organizations on behalf of the department are to be managed as a reasonably prudent person would manage funds if acting on their own behalf and such funds are to be accounted for according to generally accepted accounting principles.

(d) All closely related nonprofit organizations must enter into a memorandum of agreement with the department which details their responsibilities and duties no later than six months after the effective date of these regulations.

§63.25. Conflict of Interest, Performance of Services, and Use of Department Facilities.

(a) Unless specifically authorized by law, no officer or employee of the department shall accept remunerations from or serve as an officer, director, employee, or agent of a closely related nonprofit organization or donor. This provision does not prevent officers or employees of the department from serving as officers or directors of closely related nonprofit organizations when a condition of membership in the organization is current employment or status as an official of the department. This provision does not prohibit the administration by the department of a bona fide employee awards program.

(b) No officer or employee of the department shall act as the agent for any closely related nonprofit organization or donor in the negotiation of the terms or conditions of any agreement relating to the provision of funds, services, or property to the department by such closely related nonprofit organization or donor.

(c) The utilization of equipment, facilities or services of employees and officers of the department by a closely related nonprofit organization or donor shall be permitted only in accordance with a negotiated agreement that provides for the payment of adequate compensation for such equipment, facilities or services.

§63.27. Gifts to the Department.

(a) The department may not accept or receive gifts or bequests from any source until such gifts or bequests have been approved for acceptance by the executive director or his delegee. Acceptance of gifts is hereby delegated as follows.

(1) Gifts or improvements valued at $1,000 or less and intended to aid a specific division or facility of the department may be approved for acceptance by the manager of the facility affected by the gift or other employees designated by the executive director.

(2) Gifts or improvements valued at greater than $1,000 and less than or equal to $5,000 may be approved for acceptance by the division director responsible for the facility affected by the gift or use of the gift.

(3) Gifts or improvements valued at greater than $5,000 and all gifts of real property or interests property must be approved for acceptance by the executive director.

(b) The department may not accept a proposed improvement unless it is consistent with the park or facility master plan or public use program.

(c) Neither a donor nor a closely related nonprofit organization may accept real property on behalf of the department unless previously approved by the executive director.

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 February 6, 1992.

TRD-9202359

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Effective date: March 6, 1992

Proposal publication date: November 5, 1991

For further information, please call: 1-800-792-1112, ext. 4863 or (512) 389-4863

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Chapter 69. Resource Protection

• 31 TAC §§69.41, 69.43, 69.45, 69.47, 69.49, 69.51, 69.53, 69.55, 69.57

The Texas Parks and Wildlife Commission adopts new §§69.41, 69.43, 69.45, 69.47, 69.49, 69.51, 69.53, 69.55, and 69.57 concerning resource protection without changes to the proposed text as published in the October 4, 1991, issue of the *Texas Register* (16 TexReg 5490).

The new sections will provide the department with enforceable standards for issuing, enforcing, and revoking wildlife rehabilitation permits.

The new sections will function as a way of regulating the temporary possession of protected wildlife for the purpose of rehabilitation for eventual release to the wild.

No written comments were received. Several telephone comments were received all of which were generally favorable and no substantive changes were suggested. A public meeting was held in Austin on October 25, 1991, at which comments were generally favorable and no substantive changes were suggested.

The new sections are adopted under the authority of the Texas Parks and Wildlife Code, §43.027, as amended by the 72nd legislature in House Bill 1771, effective September 1, 1991. The section authorizes the department to make regulations governing the taking and possession of protected wildlife for rehabilitation purposes.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 6, 1992.

TRD-9202358 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Effective date: March 6, 1992

Proposal publication date: October 4, 1992

For further information, please call: 1-800-792-1112, ext. 4700 or (512) 389-4700

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Practice and Procedure

• 34 TAC §1.3

The Comptroller of Public Accounts adopts an amendment to §1.3, concerning contested cases, without changes to the proposed text as published in the December 24, 1991, issue of the *Texas Register* (16 TexReg 7630).

The purpose of the amendment is to return penalty and interest waiver issues to the hearings process. The amendment will be applied prospectively. Only penalty and interest waiver denials occurring on or after the effective date of the amendment may be appealed through the hearings process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 February 18, 1992.

TRD-9202466 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: March 10, 1992

Proposal publication date: December 24, 1991

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

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Chapter 3. Tax Administration

Subchapter A. General Rules

• 34 TAC §3.5

The Comptroller of Public Accounts adopts the repeal of §3.5, concerning settlement of tax, penalty, or interest, without changes to the proposed text as published in the January 7, 1992, issue of the *Texas Register* (17 TexReg 98).

The purpose of the repeal is to return penalty and interest issues to the hearings process.

The amendment will be applied prospectively. Only penalty and interest waiver denials occuring on or after the effective date of the amendment may be appealed through the hearings process.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Tax Code, §111.002, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 February 18, 1992.

TRD-9202464 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: March 10, 1992

Proposal publication date: January 7, 1992

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

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The Comptroller of Public Accounts adopts new §3.5, concerning waiver of penalty or interest, without changes to the proposed text as published in the January 7, 1992, issue of the *Texas Register* (17 TexReg 98).

The new section returns the final consideration of penalty and interest waiver requests to the administrative hearings process and sets out factors that will be considered when reviewing waiver requests. The amendment will be applied prospectively. Only penalty and interest waiver denials occurring on or after the effective date of the new rule may be appealed through the hearings process.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 February 18, 1992.

TRD-9202465 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: March 10, 1992

Proposal publication date: January 7, 1992

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

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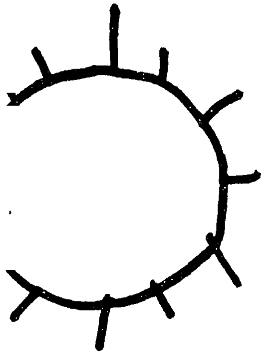

Name: Janel Jenkins

Grade: 4

School: Kuehnle Elementary School, Klein 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 of Agriculture

Thursday, February 27, 1992, 11 a.m. The State Seed and Plant Board of the Texas Department of Agriculture will meet at the Texas Department of Agriculture Regional Office, 4502 Englewood Avenue, Lubbock. According to the complete agenda, the board will consider an appeal submitted by the Texas Rice Improvement Association in response to the rejection of two rice seed lots for foundation production; consider standards for certification of peanut seed production fields regarding nutsedge contamination tolerances.

Contact: Dolores Alvardo Hibbs, P.O. Box 629, Giddings, Texas 78942, (409) 542-3691.

Filed: February 18, 1992, 4:53 p.m.

TRD-9202471

Thursday, February 27, 1992, 7:30 p.m. The Scurry County Cotton Producers Board of the Texas Department of Agriculture will meet at the Chamber of Commerce Board Room, 2302 Avenue R, Snyder. According to the complete agenda, the board will review and approve minutes from the previous meeting; review and approve financial statements; discuss and action of budget; and discuss other business.

Contact: Jon Derouen, P.O. Drawer CC, Snyder, Texas 79549, (512) 463-7583.

Filed: February 18, 1992, 2:46 p.m.

TRD-9202457

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Texas Department of Banking

Wednesday, March 4, 1992, 9 a.m. The Prepaid Funeral Guaranty Fund Advisory Council of the Texas Department of Banking will meet at the State Finance Commission Building, 2601 North Lamar Boulevard, Austin. According to the complete agenda, the council will review and discuss approval of the minutes of previous meeting; consider proposed rules providing the procedures for making a claim against the guaranty fund and the guidelines for determining the eligibility of submitted claims; and discuss the dates and times of future meetings.

Contact: Anna E. Gonzales, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: February 19, 1992, 1:26 p.m.

TRD-9202528

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Texas Department of Commerce

Wednesday, February 26, 1992, 8:30 a.m. The State Job Training Coordinating Council Worker Adjustment Committee of the Texas Department of Commerce will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin. According to the agenda summary, the committee will act on recommendations on PY92-92 Title III performance standards and PY92-93 Title III State Plan Review; a policy briefing will be presented on PY92-93 Title III Substate Plan review; and briefings will be presented on PY92 allocations and update on PY92 Dislocated Worker Programs.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: February 18, 1992, 1:11 p.m.

TRD-9202445

Wednesday, February 26, 1992, 8:30 a.m. The State Job Training Coordinating Council Program Policy Committee of the Texas Department of Commerce will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin. According to the agenda summary, the committee will take action on PY92-93 Performance Standards and Six Percent Incentives Policy; a policy briefing will be presented on PY92-93 Title IIA and CY92 IIB Plan Review Process; and briefings will be presented on PY92 JTPA allocations, options for designating hard-to-serve groups; and update on offenders initiatives, and second quarter performance report.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: February 18, 1992, 1:10 p.m.

TRD-9202444

Wednesday, February 26, 1992, 1:30 p.m. The State Job Training Coordinating Council Oversight Committee of the Texas Department of Commerce will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin. According to the agenda summary, the committee will present a policy briefing on reorganization and sanctions policy; briefings will be presented on PY91 technical assistance plans, second quarter fiscal report; update on second quarter monitoring report; and implementation of Texas Department of Commerce Work Force Development Division Internal Monitoring Unit.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: February 18, 1992, 1:11 p.m.

TRD-9202447

Wednesday, February 26, 1992, 1:30 p.m. The State Job Training Coordinating Council Strategic Planning/Coordinating Committee of the Texas Department of Commerce will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin. According to the agenda summary, the committee will take action on review and comment on adult education plan, Governor's coordination and special services plan, and PY92 education coordination (8%) policy; policy briefings will be presented on council review and comment on vocational education, job opportunities and basic skills (JOBS), and employment services plans; briefings will be presented on PY92 JTPA allocations, PY92 Wagner-Peyser 7(b) update, Governor's smart jobs plan and skills development program; update on sunset review process; and status of PY91 school-to-work transition projects.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: February 18, 1992, 1:11 p.m.

TRD-9202446

Thursday, February 27, 1992, 8:30 a.m. The State Job Training Coordinating Council of the Texas Department of Commerce will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin. According to the agenda summary, the council will act on committee action items and proclamation regarding JTPA amendments; standard committee reports; association reports; and federal legislative update will also be given.

Contact: Alexa Ray, P.O. Box 12728, Austin, Texas 78711, (512) 320-9884.

Filed: February 18, 1992, 1:10 p.m.

TRD-9202443

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Texas Department of Criminal Justice, Board of Pardons and Paroles

Wednesday, February 26, 1992, 8:30 a.m. The Board of Pardons and Paroles of the Texas Department of Criminal Justice will meet at 8610 Shoal Creek Boulevard, Austin. According to the complete agenda, the board will meet in a workshop session to discuss the following items: Johnson, et al versus Board of Pardons and Paroles; rules/procedures update; special needs parole; special projects overview; hearing process overview; and interstate compact services overview.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5405.

Filed: February 18, 1992, 5:08 p.m.

TRD-9202475

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Texas Education Agency

Thursday, February 27, 1992, 10 a.m. The Software Advisory Committee of the Texas Education Agency will meet at the Sheraton Hotel, 500 North IH-35, Austin. According to the agenda summary, the committee will give an update of the States' Consortium for improving software selection and the software selection tools for Texas schools; final plans for software selection tools; discuss the Software Advisory Committee's long-range plans and development of an action plan for meeting its third state mandate; and, approval of software standards developed by the Advisory Committee for Technology standards.

Contact: Karen Kahan, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9401.

Filed: February 19, 1992, 4:50 p.m.

TRD-9202568

Thursday, February 27, 1992, 9 a.m. The Vocational and Applied Technology Education Committee of Practitioners of the Texas Education Agency will meet at the Texas Higher Education Coordinating Board Offices, 7745 Chevy Chase Drive, Building Five, Room 5.139, I-35 and U.S. 183, Austin. According to the complete agenda, the committee will discuss results of projects to design the statewide system of course standards and measures of performance for vocational and applied technology education; make recommendations to the State Board for Vocational Education (State Board of Education) for developing and implementing the system at the secondary and post-secondary levels.

Contact: Robert S. Patterson, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9446.

Filed: February 19, 1992, 4:54 p.m.

TRD-9202569

Friday, February 28, 1992, 9 a.m. The Commission on Standards for the Teaching Profession, 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 agenda summary, the committee will take roll call; introduce new members; adopt agenda; approve minutes from November 15, 1991 meeting; present certificates of appreciation; discuss plans for February 28-March 1 retreat for commission members; progress report on activities of Task Force on Professional Development; progress report on implementation of House Bill 2885, Centers for Professional Development and Technology; report on items relating to standards and procedures for institutional approval; and report on items relating to certification programs and requirements.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: February 19, 1992, 8:13 a.m.

TRD-9202484

Friday, March 6, 1992, 8:45 a.m. The Committee of Practitioners, Chapter 1 of the Texas Education Agency will meet at the Lake Austin Financial Plaza, 1717 West Sixth Street, Room 335, Austin. According to the complete agenda, the committee will review and discuss public education information management system information relating to Chapter 1; discuss subcommittee on evaluation for Chapter 1; discuss standard application system-SAS-201R93 application; outcome base monitoring follow-up discussion; and presentation on capital expenses; and summary of reauthorization.

Contact: Tommy L. Harris, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9374.

Filed: February 19, 1992, 8:13 a.m.

TRD-9202485

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Advisory Commission on State Emergency Communications

Wednesday, February 26, 1992, 2 p.m. The Executive Committee of the Advisory Commission on State Emergency Communications will meet at 500 Throckmorton, Suite 2706, Tarrant County 9-1-1 District Office, Fort Worth. According to the complete agenda, the committee will call the meeting to order and recognize guests; hear public comment; discuss overall relationship between emergency communications districts and the Advisory Commission on State Emergency Communications; discuss participation of emergency communications districts through equalization, other funds; discuss procedures for submission of requests for funding by emergency communications districts; discuss five-year plan; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: February 19, 1992, 4:41 p.m.

TRD-9202566

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Texas Employment Commission

Tuesday, February 25, 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 emergency revised agenda summary, the commission will discuss in executive session Rudolph Flowers, II versus Texas Employment Commission and San Antonio State Hospital; and Bernardino Gonzales and Alma Barrera versus James J. Kaster, et al. The emergency status is necessary to accommodate settlement and docketing opportunities.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: February 18, 1992, 1:50 p.m.

TRD-9202449

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The Finance Commission of Texas

Friday, February 28, 1992, 9:30 a.m. The Finance Commission of Texas will meet at

the Finance Commission Building, 2601 North Lamar Boulevard, Third Floor Hearing Room, Austin. According to the agenda summary, the commission will consider committee reports and individual departmental and operational reports from the banking, savings and loan, and consumer credit departments; and meet in executive session in regard to supervisory, litigation and personnel matters.

Contact: James L. Pledger, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1350.

Filed: February 20, 1992, 9:06 a.m.

TRD-9202573

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Texas Commission on Fire Protection

Wednesday-Thursday, March 4-5, 1992, 9 a.m. The Fire Protection (Sprinkler) Advisory Council of the Texas Commission on Fire Protection will meet at the Howard Johnson Plaza Hotel North, 7800 North IH-35 at 183, Austin. According to the complete agenda, the council will elect a chairman and vice-chairman; discuss and possibly act on amendments to rules relating to sprinkler systems; discuss necessary amendments to Insurance Code Article 5.43-3 and of possible major revisions to that Article.

Contact: Jack Woods, P.O. Box 2286, Austin, Texas 78768-2286, (512) 322-3550.

Filed: February 19, 1992, 9:22 a.m.

TRD-9202496

Wednesday, March 4-5, 1992, 10 a.m. The Fire Alarm Advisory Council of the Texas Commission on Fire Protection will meet at the Howard Johnson Plaza Hotel North, 7800 North IH-35 at 183, Austin. According to the complete agenda, the council will discuss and possibly act on amendments to rules relating to alarm systems; and discuss necessary amendments to Insurance Code Article 5.43-2, and of possible major revisions to that Article.

Contact: Jack Woods, P.O. Box 2286, Austin, Texas 78768-2286, (512) 322-3550.

Filed: February 19, 1992, 9:23 a.m.

TRD-9202498

Wednesday-Thursday, March 4-5, 1992, 10 a.m. The Fire Extinguisher Advisory Council of the Texas Commission on Fire Protection will meet at the Howard Johnson Plaza Hotel North, 7800 North IH-35 at 183, Austin. According to the complete agenda, the council will discuss and possibly act on amendments to rules relating to extinguisher systems; and discuss necessary amendments to Insurance Code Article 5.43-1 and of possible major revisions to that Article.

Contact: Jack Woods, P.O. Box 2286, Austin, Texas 78768-2286, (512) 322-3550.

Filed: February 19, 1992, 9:23 a.m.

TRD-9202497

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General Services Commission

Friday, February 28, 1992, 9:30 a.m. The General Services Commission will meet at the Central Services Building, 1711 San Jacinto Street, Room 402, Austin. According to the agenda summary, the commission will consider the appointment of an executive director; consider for request for financing for Hobby Building; consider life-safety items; proposed amendments to §115.35 and §115.36 concerning space leasing; adoption of amendments to §§125.1, 125.3, 125.7, 125.9, 125.11, 125.13, 125.17, 125.19, 125.21 and new §125.23 concerning travel program; adoption of §121.10 concerning TEX-AN; consider revising commission charge card policy statement; presentation by the Texas Association of Procurement Assistance Center, Inc.; recycling presentation; monthly alternative fuels report; monthly update on statewide telecommunications plan; monthly construction report; monthly operating report; activity report; meet in executive session to consider appointment of executive director; and status of pending litigation.

Contact: Judith M. Porras, 1711 San Jacinto Street, Austin, Texas 78701, (512) 463-3446.

Filed: February 20, 1992, 9:09 a.m.

TRD-9202572

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Governor's Health Policy Task Force

Thursday, February 27, 1992, 9 a.m. The Joint Meeting of Subcommittees on Cost Containment and Finance of the Governor's Health Policy Task Force will meet at the John H. Reagan Building, 105 West 15th Street, Room 105, Austin. According to the agenda summary, the subcommittees will review and discuss: hospital finance and cost containment; discussion; break; ERISA: finance and cost containment; discussion; lunch; cost and finance of selected insurance elements; discussion; and individuals subcommittees' business. Persons requesting interpreter services for the hearing impaired, please contact this office.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: February 18, 1992, 3:42 p.m.

TRD-9202462

Friday, February 28, 1992, 10 a.m. The Joint Meeting of Subcommittees on Essential Services and Availability of the Governor's Health Policy Task Force will meet at the Texas Department of Health, 1100 West 49th Street, Board Room, Austin. According to the agenda summary, the subcommittees will give presentations of a profile of uninsured Texans, minority health issues in Texas, and women, infants and children's health issues in Texas; lunch; and presentations of health care providers and hospitals. Persons requesting interpreter services for the hearing impaired, please contact this office.

Contact: Pamela Crail, P.O. Box 149133, Austin, Texas 78714-9133, (512) 463-6473.

Filed: February 18, 1992, 3:40 p.m.

TRD-9202461

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Texas Statewide Health Coordinating Council

Wednesday, February 26, 1992, 10 a.m. The Ad Hoc Committee on Health Concerns of the Elderly of the Texas Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room M-653, Austin. According to the complete agenda, the committee will introduce new members and consider and possibly act on: model programs; state agency presentations; selection of workgroups, including leaders; workgroup meetings; workgroup reports; and discuss future activities.

Contact: Carol Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: February 18, 1992, 4:08 p.m.

TRD-9202467

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Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Thursday, February 27, 1992, 6 p.m. The Organization Committee of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet at the Ramada Airport Hotel, 5660 North IH-35, Austin. According to the complete agenda, the committee will review and discuss strategic planning and update on sunset report.

Contact: Wanda F. Stewart, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756-3178, (512) 459-1488.

Filed: February 19, 1992, 11:32 a.m.

TRD-9202524

Friday, February 28, 1992, 8 a.m. The State Board Examination Committee of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet at the Ramada Airport Hotel, 5660 North IH-35, Austin. According to the complete agenda, the committee will conduct state examination.

Contact: Wanda F. Stewart, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756-3178, (512) 459-1488.

Filed: February 19, 1992, 11:32 a.m.

TRD-9202522

Saturday, February 29, 1992, 8 a.m. The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet at the Ramada Airport Hotel, 5660 North IH-35, Austin. According to the complete agenda, the board will have prayer-George D. Holland, Jr.; discuss approval of minutes of October 26, 1991 meeting; board action on exam; update on sunset activity; committee reports; executive director's report; president's report; and plan future meeting dates.

Contact: Wanda F. Stewart, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756-3178, (512) 459-1488.

Filed: February 19, 1992, 11:32 a.m.

TRD-9202523

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Texas Hospital Equipment Financing Council

Thursday, February 20, 1992, 10 a.m. The Texas Hospital Equipment Financing Council met at the Texas State Treasury Department, LBJ Building, 111 East 17th Street, Austin. According to the emergency revised agenda summary, the council gave authorization to trustee to pay mandatory sinking fund redemptions due in April 1992; and authorization for chairman to execute documents regarding 1991 audit. The emergency status was necessary as additional items were scheduled for meeting on February 20, 1992.

Contact: Rose-Michel Manguia, 111 East 17th Street, Austin, Texas 78701, (512) 463-5971.

Filed: February 18, 1992, 4:18 p.m.

TRD-9202468

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Texas Commission on Human Rights

Tuesday, February 25, 1992, 10:30 a.m. (rescheduled from February 27, 1992). The Texas Commission on Human Rights will hold an emergency meeting at the John H. Reagan Building, 105 West 15th Street, Room 101, Austin. According to the agenda summary, the commission will discuss and vote on agenda item(s) covered in executive session as necessary or required; welcome guests; discuss approval of minutes; chairman's appointment of task force to assist in the preparation of the amendments to the TCHR Act relating to the Civil Rights Act of 1991; administrative reports; discuss discriminatory comments by public officials in Japan against United States workers based on national origin; discuss Texas Fair Housing Summit; discuss Southern Regional IAOHRA/NARHW Conference and the Civil Rights Executive Council; initial planning on the commission's EEO Law Conference; status of EEO compliance training; report on commission activities relating to Article V, Section 105; discuss agency strategic plan required under the 1992-1993 biennium budget; commissioner issues; and discuss unfinished business. The emergency status is necessary in order to have a quorum of the commission.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: February 19, 1992, 10:58 a.m.

TRD-9202507

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Texas Department of Human Services

Wednesday, March 4, 1992, 9:30 a.m. The Hospital Payment 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 have opening comments; hear deputy commissioner's comments; discuss approval of minutes; status of disproportionate share programs; survey of disproportionate share hospitals; strategic plan; revision of standard dollar amount inflation methodology; open discussion; set next meeting date; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: February 20, 1992, 8:55 a.m.

TRD-9202571

Friday, March 6, 1992, 10 a.m. The Aged and Disabled Services 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; discuss approval of minutes; reports on Federal Legislative update and House Bill 7 transition update; elimination of U.S. citizen requirement for in-home and family support eligibility; current service name change; revised reimbursement methodology rules for the medicaid home and community-based services program; physician orders for PHC and DAHS; amendment to the existing community living assistance and support services program rules; recommendations for ensuring access to DHS services for persons with disabilities; earned income tax credits exclusion; revised medical transportation program policies and procedures; rules on remedies against nursing facilities for contract violations; nurse aide training and competency evaluation costs; feedback on advisory committee recommendations on development and discussion of tracking mechanism for ADAC recommendations; open discussion by members; set next meeting date; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: February 20, 1992, 9:25 a.m.

TRD-9202574

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Texas Department of Insurance

Thursday, February 27, 1992, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will review and discuss solvency; personnel including consideration of Deputy Commissioner III to serve as the Director of Intergovernmental Affairs; litigation; commissioner's orders; board and commissioner planning calendar; consider: publication of proposed new 28 TAC §5.9303 to define a weather related event for purposes of providing additional days for claims processing; transition period which insurers may elect to use workers' compensation rates in effect immediately prior to March 1, 1992; calls for Texas Workers' Compensation Investment Income and Experience Data; special call for Texas Workers' Compensation Experience Data; and appointment of two public representatives to the Texas Catastrophe Property Insurance Association Board of Directors by the Office of Public Insurance Counsel.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: February 19, 1992, 11:41 a.m.

TRD-9202525

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Public Utility Commission of Texas

Wednesday, February 19, 1992, 9 a.m. The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete emergency revised agenda, the commission will consider the appeal of Examiner's Order Number 15 in Docket Number 9640-complaint of Metropolitan Fiber Systems, Inc. against Southwestern Bell Telephone Company. The emergency status was necessary as prompt commission action was necessary to preserve jurisdiction over the subject matter of the appeal.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 18, 1992, 2:02 p.m.

TRD-9202450

Monday, March 2, 1992, 1:30 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 10939-complaint of William A. Marek, Jr. against Houston Lighting and Power Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 18, 1992, 2:44 p.m.

TRD-9202456

Monday, April 6, 1992, 10 a.m. (rescheduled from March 16, 1992, 10 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 prehearing conference in Docket Number 10688-application of Southwestern Bell Telephone Company to revise Section 14 of the access service tariff.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 19, 1992, 3:04 p.m.

TRD-9202539

Tuesday, April 7, 1992, 10 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 10688-application of Southwestern Bell Telephone Company to revise Section 14 of the access service tariff.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 19, 1992, 3:05 p.m.

TRD-9202540

Monday, April 13, 1992, 10 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 10731-application of Southwestern Bell Telephone Company to reduce rates for Type 1 and Type 2A service in the cellular mobile interconnection tariff.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 19, 1992, 3:05 p.m.

TRD-9202541

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Interagency Council on Sex Offender Treatment

Friday, February 28, 1992, 10:30 a.m. The Interagency Council on Sex Offender Treatment will meet at 1100 West 49th Street, #M418, Austin. According to the complete agenda, the board will conduct the Sam Houston State Sex Offender Treatment Conference Committee meeting at 9 a.m.; discuss approval of minutes of January 31, 1992; report by staff; discuss and approve: strategic plan; registry format; meet in executive session to discuss personnel matters; approve hiring of executive director; and hear public comment.

Contact: D. Michelle Yoscak, 9111 Jollyville Road, #202, Austin, Texas 78759, (512) 343-8520.

Filed: February 19, 1992, 10:58 a.m.

TRD-9202508

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Teacher Retirement System of Texas

Friday, March 6, 1992, 1:30 p.m. The Retirees Advisory Committee of the Teacher Retirement System of Texas will meet at the Fifth Floor Board Room, 1000 Red River Street, Austin. According to the complete agenda, the committee will welcome guests; introduction of guests; discuss approval of the minutes of December 12, 1991 meeting; report on investment of TRS-Care Fund; report on status of TRS-Care Fund; staff recommendation regarding retiree contributions; staff recommendation regarding indexing; staff recommendation regarding open enrollment; staff recommendation regarding pre-certification penalty; hear public comment; consider staff recommendations; administrative remarks; and adjourn.

Contact: Stanford Blake, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6394.

Filed: February 19, 1992, 9:01 a.m.

TRD-9202489

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Texas Water Commission

Wednesday, February 19, 1992, 10 a.m. The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency 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. The emergency status was necessary due to unforeseeable circumstances, these items had to be placed on the agenda.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 18, 1992, 2:06 p.m.

TRD-9202452

Wednesday, February 26, 1992, 9 a.m. (revised agenda). 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 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: February 18, 1992, 5:07 p.m.

TRD-9202473

Wednesday, February 26, 1992, 10 a.m. (revised agenda). The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the agenda

summary, the commission will review and discuss litigations and related agency actions of the commission concerning Edwards Aquifer.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: February 18, 1992, 5:08 p.m.

TRD-9202474

Thursday, April 9, 1992, 1 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Erath County Courthouse, Courtroom, Second Floor, On the Square, Stephenville. According to the agenda summary, the office will consider an application by T. J. Hoekstra and David C. Morton for proposed Permit Number 03384 which authorizes disposal of waste and wastewater from a dairy with a maximum of 600 head. The dairy is located on the south side of FM 2156 at the intersection of FM 2156 and FM 219 in Erath County. This location is in the drainage area of the North Bosque River in Segment Number 1226 of the Brazos River Basin.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 19, 1992, 10:58 a.m.

TRD-9202509

Thursday, April 16, 1992, 1 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Karnes City Public Library, Meeting Room, 302 South Panna Maria Street, Karnes City. According to the agenda summary, the office will consider an application by Morrison-Knudsen Corporation for proposed Permit Number 03382 to authorize an intermittent flow variable discharge of groundwater and stormwater runoff. The plant site is adjacent to and on each side of FM Road 1344, approximately 3,900 feet northwest of FM 791 and approximately eight miles southwest of the City of Falls City, Karnes County. The effluent is discharged into Tordilla Creek; thence to Los Cortes Creek; thence to Borrego Creek; thence to the Atascosa River, Segment Number 2107 of the Nueces River Basin.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 19, 1992, 10:56 a.m.

TRD-9202510

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Texas Workers' Compensation Insurance Fund

Wednesday, February 26, 1992, 8:30 a.m. The Board of Directors of the Texas Workers' Compensation Insurance Fund will meet at the Crest Hotel, San Antonio Room, 111 East First Street, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; hear staff reports: finance; marketing; claims; public relations; board member lobbying; review and approve January 22, 1992 minutes; consider by-laws; discuss personnel policies and procedures; report on legislative oversight committee February 15; training opportunities; resolution to authorize underwriting contract; meet in executive session for deliberation on terms of underwriting contract; claims administration contract negotiations; MIS contract negotiations; rate filing and actuarial studies; and discuss requirement for filing conflict of interest forms.

Contact: Alana Foster, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3800.

Filed: February 19, 1992, 12:06 p.m.

TRD-9202527

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Texas Workers' Compensation Research Center

Friday, February 28, 1992, 9 a.m. The Board of Directors of the Texas Workers' Compensation Research Center will meet at the LBJ School of Public Affairs, University of Texas, Sid Richardson Hall, Room 3.110, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of the minutes; election of officers; hear committee reports; work session on the research agenda; and adjourn.

Contact: June L. Karp, 1005 Sam Houston Building, Austin, Texas 78701, (512) 475-4991.

Filed: February 18, 1992, 12:19 p.m.

TRD-9202442

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Regional Meetings

Meetings Filed February 18, 1992

The Bexar Appraisal District Board of Directors met at 535 South Main Street, San Antonio, February 24, 1992, at 5 p.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9202440.

The Burnet County Appraisal District Board of Directors met at 223 South Pierce Street, Burnet, February 20, 1992, at 6:30 p.m. Information may be obtained from Barbara Ratliff, P.O. Drawer 3, Burnet, Texas 78611, (512) 756-8291. TRD-9202451.

The Cash Water Supply Corporation will meet at the Administration Office, Greenville, March 24, 1992, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9202454.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, February 25, 1992, at 3 p.m. Information may be obtained from Sandy Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9202455.

The Sabine River Authority of Texas Board of Directors met at the Fredonia Hotel, Nacogdoches, February 21, 1992, at 10 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9202453.

The San Antonio-Bexar County Metropolitan Planning Organization Steering Committee met at the San Antonio City Hall, Basement Conference Room, San Antonio, February 24, 1992, at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 434 South Main Street, Suite 205, San Antonio, Texas 78205, (512) 227-8651. TRD-9202472.

The Texas Political Subdivisions Self-Insurance Funds Board of Trustees met at the Hyatt Regency Hotel, D/FW Airport, Dallas/Fort Worth, February 24, 1992, at 9 a.m. Information may be obtained from Tom P. Vick, P.O. Box 2759, Dallas, Texas 75221, (214) 760-6183. TRD-9202469.

The West Central Texas Council of Governments Executive Committee will meet at 1125 East North Tenth Street, Abilene, February 26, 1992, at 10 a.m. Information may be obtained from Brad Helbert, 1025 East North Tenth Street, Abilene, Texas 79601, (915) 672-8544. TRD-9202470.

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Meetings Filed February 19, 1992

The Alamo Area Council of Governments Area Judges will meet at 118 Broadway Street, Suite 420, San Antonio, February 25, 1992, at 11:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway Street, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9202564.

The Austin-Travis County Mental Health and Mental Retardation Center Executive Committee met at 1430 Collier Street, Conference Room One, Austin, February 19, 1992, at 11:45 a.m. The emergency status was necessary as an item required immediate attention. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 440-4031. TRD-9202488.

The Austin-Travis County Mental Health and Mental Retardation Center Finance and Control Committee met at 1430 Collier Street, Austin. The emergency status was necessary as item required immediate action in executive session. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 440-4031. TRD-9202494.

The Comal Appraisal District Board of Directors met at 430 West Mill Street, New Braunfels, February 24, 1992, at 5:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597. TRD-9202495.

The County Education District Number Six Board of Trustees met at the Brownfield I.S.D. Administration Building, 601 Tahoka Road, Brownfield, February 24, 1992, at 7 p.m. Information may be obtained from Larry R. Throm, 1628 19th Street, Lubbock, Texas 79401, (806) 766-1092. TRD-9202506.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, February 25, 1992, at 3 p.m. The emergency status was necessary as the need to add litigation statement to executive session. Information may be obtained from Sandy Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9202529.

The Johnson County Rural Water Supply Corporation met at the Corporation Office, Highway 171 South, Cleburne, February 24, 1992, at 6 p.m. Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9202542.

The Mills County Appraisal District will meet at the Mills County Courthouse, Jury Room, Goldthwaite, February 27, 1992, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9202532.

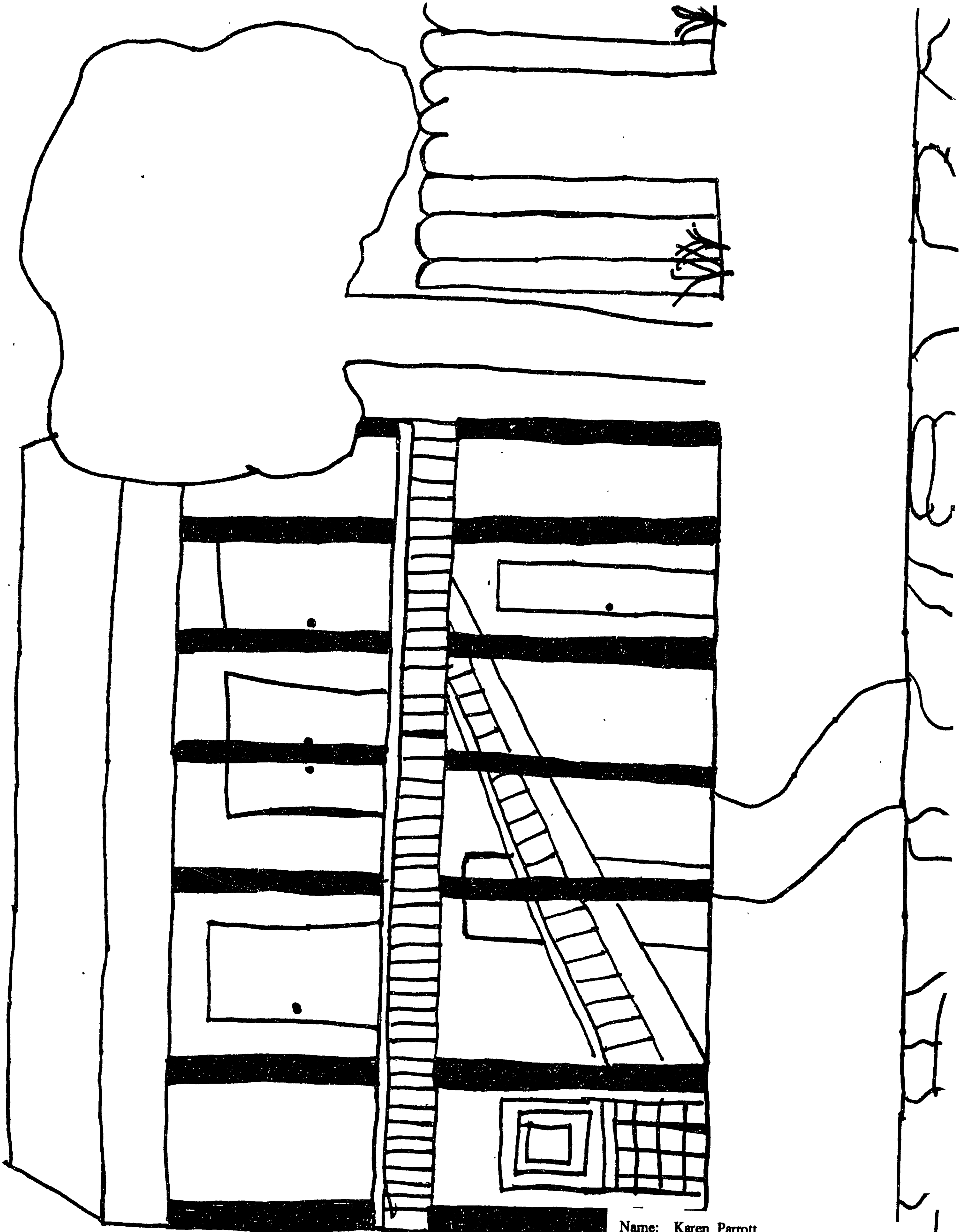
The Northeast Texas Municipal Water District Board of Directors met at Highway 250 South, Hughes Springs, February 24, 1992, at 10 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9202531.

The San Jacinto River Authority Board of Directors will meet at the Houston I Room, HESS Building, 3121 Buffalo Speedway, Houston, February 26, 1992, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9202530.

The Texas Panhandle Mental Health Authority Board of Trustees will meet at 7120 I-40 West, Suite 150, Amarillo, February 27, 1992, at 10:30 a.m. Information may be obtained from Mellisa Talley, P.O. Box 3250, Amarillo, Texas 79116, (806) 353-3699. TRD-9202535.

The Technology Partnership Organization Board of Directors will meet at the Brownsboro High School, Brownsboro, February 26, 1992, at 2 p.m. Information may be obtained from Shelly McNeel, 3900 University Boulevard, Tyler, Texas 75701, (903) 566-7315. TRD-9202567.

The Trinity River Authority of Texas Board of Directors will meet at 5300 South Collins Street, Arlington, February 26, 1992, at 10 a.m. Information may be obtained from J. Sam Scott, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9202536.



Name: Karen Parrott

Grade: 4

School: Kuehnle Elementary School, Klein 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

Notice of Public Hearings

The Texas Commission on Alcohol and Drug Abuse's Multicultural Affairs Advisory Council will hold public hearings on minority population issues.

Specific comments and recommendations will be solicited on the following issues: identification of barriers to chemical dependency treatment service delivery and possible solutions to these barriers for minority populations; minority funding opportunities, and minority training needs.

Seven public hearings have been scheduled at the following times and locations: Monday, March 2, 1992, 3:30 p.m. to 5:30, Houston-Galveston Area Council, 3555 Timmons Lane, Suite 500, Houston, Texas 77227; Tuesday, March 3, 1992, 9:30 a.m. to 11:30 a.m., Harlingen City Council Chamber, 118 East Tyler, Harlingen, Texas 78551; Tuesday, March 3, 1992, 1:30 p.m. to 3:30 p.m., Coastal Bend Council of Governments, 2910 Leopard, Corpus Christi, Texas 78469; Wednesday, March 4, 1992, 9:30 a.m. to 11:30 a.m., North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76005; Wednesday, March 4, 1992, 1:30 p.m. to 3:30 p.m., Tyler City Council Chamber, 212 North Bonner, Tyler, Texas 75710; Friday, March 6, 1992, 9:30 a.m. to 11:30 a.m., South Plains Association of Governments. 1323 58th Street, Lubbock, Texas 79452; and Tuesday, March 10, 1992, 9:30 a.m. to 11:30 a.m., Rio Grande Council of Governments, 1014 North Stanton, Suite 100, El Paso, Texas 79902.

Spanish language interpreters or interpreters for the hearing impaired can be arranged by contacting Carlene Phillips at the Texas Commission on Alcohol and Drug Abuse 10 days prior to each hearing at (512) 867-8700.

For additional information, contact Carlene Phillips or Cindi Magill at the Texas Commission on Alcohol and Drug Abuse, 720 Brazos, Suite 403, Austin, Texas 78701, (512) 867-8700.

Issued in Austin, Texas, on February 14, 1992.

TRD-9202414 Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: February 18, 1992

For further information, please call: (512) 867-8700

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Department of Banking

Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On February 12, 1992, the banking commissioner received an application to acquire control of First Bank and Trust of Childress, Childress, Texas, by Charles H. Mashburn of Childress.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Issued in Austin, Texas, on February 12, 1992.

TRD-9202337 William . . Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: February 14, 1992

For further information, please call: (512) 475-1317

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Notice of Hearing

The hearings officer of the Texas Department of Banking, under the authority of the Texas Banking Code, Article 5, Chapter III, (Texas Civil Statutes, Article 342-305), will conduct a hearing before the Banking Board regarding the charter application of FIRSTBANK, Dallas, to be located at 15150 Preston Road, Dallas, Texas 74248. The hearing will be held at 9 a.m. on April 9, 1992 at the Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Additional information may be obtained from: James Lee Murphy, III, Hearing Officer and Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202448 Ann Graham
General Counsel
Texas Department of Banking

Filed: February 18, 1992

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

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Texas Education Agency

Consultant Contract Award

Description: This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. After publication of request for proposal in the November 8, 1991, issue of the *Texas Register* (16 TexReg 6498), the Texas Education Agency on February 13, 1992, executed a contract with Tracor Applied Sciences, Inc., 6500 Tracor Lane, Austin, Texas 78725, to perform an investment accounting system re-

quirements study and to develop a general systems design document to be used in the subsequent development of an automated investment accounting system.

Costs and Dates: The total amount of the contract is $89,010.13. Beginning date for the contract will be February 13, 1992, and ending date will be April 30, 1992.

Due Dates of Reports: The contractor will provide monthly status/progress reports on March 10, 1992 and on April 10, 1992, and a final general system design document on April 30, 1992.

Issued in Austin, Texas, on February 14, 1992.

TRD-9202352 Lionel R. Meno
Commissioner of Education

Filed: February 14, 1992

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

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Notice of Contract Award

Description: After publication of a consultant proposal request (#701-92-024) in the December 17, 1991, issue of the *Texas Register* (16 TexReg 7386) for a firm to conduct a study of the non-training services for the high-cost courses in the regular and vocational education programs, the Texas Education Agency has awarded a contract to the Texas Center for Educational Research, 7703 North Lamar Boulevard, P.O. Box 2947, Austin, Texas 78768-3947.

Dates of project: The contract will begin on February 6, 1992, and the contract will end on July 3, 1992.

Contract amount: The amount of the contract is $25,925.

Final report: Commonly offered high-cost courses and their per pupil costs must be identified as a result of this study. The project will be completed on July 3, 1992.

Further Information: For further information about the inventory project, please contact Gail Nelson, Senior Analyst, Legislative Education Board at (512) 463-1146.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202487 Lionel R. Meno
Commissioner of Education

Filed: February 19, 1992

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

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Request for Applications

RFA #701-92-034: This request for applications is filed in accordance with the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77 and Public Law 101-645, as amended, Subtitle VII-B.

Eligible Applicants: The Texas Education Agency (TEA) is requesting applications (RFA #701-92-034) from school districts, cooperatives of school districts, and education service centers in Texas for the development of programs to provide educational and related services (beyond those provided in the general education program) to facilitate the enrollment, attendance, and school success of homeless children and youth.

Description: Applicants should describe plans to provide tutoring and other academic assistance (at least 50% of each grant award), and other related services (at least 35% of each grant award) that might improve the access of homeless children and youth to a free and appropriate public education. Project evaluations will include input from shelter personnel, homeless parents, and school personnel of the impact of the project on the enrollment, school attendance, and academic success of homeless students.

Date of Project: The educational and related services for homeless students project will begin no earlier than May 15, 1992 and will end no later than July 31, 1993.

Project Amount: Funding will be provided for three projects. Each project will receive funding at a level not to exceed $50,000 per grant award. Approximately $150,000 in federal funds is available for this project. One hundred percent of projects costs will be funded from federal funds.

Selection Criteria: Applicants will be approved based upon the ability of each applicant to carry out all requirements contained in the request for application. TEA reserves the right to select from the highest-ranking applications those which will provide the most effective educational and related services to homeless students.

Requesting the Application: To obtain a copy of the Request for Application (RFA 701-92-034), call (512) 463-9304 or write the Document Control Center, Texas Education Agency, Room 6-108, 1701 North Congress Avenue, Texas 78701-1494. Please refer to the RFA # in your request.

Further Information: For clarifying information about this request, contact Barbara Ward, Division of Accelerated Instruction, Texas Education Agency, (512) 463-9694.

Deadline for Receipt of Applications: Applications may be delivered by mail or in person to the Texas Education Agency, Document Control Center, Room 6-108. The Document Control Center is open Monday-Friday, 8 a.m. to 5 p.m., excluding holidays. To be considered for funding, applications must be received no later than 5 p.m. on Friday, April 10, 1992.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202486 Lionel R. Meno
Commissioner of Education

Filed: February 19, 1992

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

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Governor's Budget and Planning Office

Consultant Contract Award

The Governor's Budget and Planning Office (GBPO) furnishes this notice of a consulting services contract award to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the state of Texas' consolidated statewide cost allocation plan for the fiscal year ending August 31, 1993.

The notice for request for proposals was published in the December 6, 1991, issue of the *Texas Register* (16 TexReg 7939).

Description of Services. The contractor will develop a cost allocation plan that enables eligible state agencies to

recover the maximum indirect costs possible from federal programs and ascertain indirect costs from state funds to provide state services.

Effective Date of Value of Contract. The contract will be effective from February 5, 1992 until August 31, 1993. The total cost of the contract is $38,000.

Name of Contractor. The contract has been awarded to David M. Griffith and Associates, 8100 Springwood Drive, Suite 200, Irving, Texas 75063.

Persons who have questions concerning this award may contact Tom Adams, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78701, (512) 463-1778.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202499 Dale K. Craymer
Director
Governor's Budget and Planning Office

Filed: February 19, 1992

For further information, please call: (512) 463-1778

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Texas Department of Health

Corrections of Error

The Texas Department of Health proposed amendments to 25 TAC Chapter 145, concerning Long Term Health Care. The rules were published in the February 4, 1992, *Texas Register* (17 TexReg 926).

In the first paragraph of the preamble, the second sentence contains an error and should read as follows. "Section 145.23 covers physical plant and environment standards for nursing homes; §145.35 covers minimum standards for custodial care homes;..."

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the Texas Department of Health adopted amendments and new sections for 25 TAC Chapter 325, concerning Solid Waste Management. The rules were published in the February 7, 1992, *Texas Register* (17 TexReg 1097). Due to an error by the *Texas Register* the effective date was published in incorrectly as February 2, 1992. The correct effective date is February 21, 1992.

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Medicaid-Related Activities Consultant Services

Description of services. Tonn and Associates will provide consultant services to the Texas Department of Health for its Medicaid-related activities. Consultation will focus on relating public health programs to state Medicaid services and thereby result in recommendations designed to increase the amount of federal funds received by the department. They will establish a framework to accomplish the project objectives as listed in the request for proposal in coordination with key agencies and local health departments. In conducting its study, the firm will assemble and analyze baseline data and develop a liaison structure to address and remedy federal, state, or local barriers to maximize Medicaid funding. Tonn and Associates will provide monthly status reports with the final report to be issued August 15, 1992.

Name and business address of consultant. Tonn and Associates, 3508 Far West Boulevard Suite 150, Austin, Texas 78731.

Total value and beginning and ending dates of contract. The contract amount is $70,000 and is effective from February 14, 1992-August 31, 1992.

Due dates of documents. Final report is due August 15, 1992, close out and final activities are to be completed no later than August 31, 1992. For further information please call: (512) 458-7261.

Issued in Austin, Texas, on February 14, 1992.

TRD-9202410 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: February 18, 1992

For further information, please call: (512) 458-7261

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Texas Department of Housing and Community Affairs

Notice of Public Hearings

The Texas Department of Housing and Community Affairs announces the following five public hearings to solicit comments on the Texas Community Development Program's proposed Final Statement to the United States Department of Housing and Urban Development (HUD) for Program Year 1992. Topics to be discussed include the proposed Final Statement, the purposes and goals of the program, eligible applicants and activities, fund allocations, the application process, project selection criteria, and any proposed procedural changes. Copies of the proposed Final Statement and any proposed procedural changes will be available at these hearings.

Comments or suggestions may be presented in person at any of the public hearings or may be submitted in writing to the Texas Department of Housing and Community Affairs, Community Development Block Grant Division, P.O. Box 12026, Austin, Texas 78711-2026 by March 26, 1992.

The following is a list of the five public hearings to be held: Tuesday, March 10, 1992 at 10:30 a.m., University of Texas at Tyler, University Center, Room 118, 3900 University Boulevard, Tyler, Texas 75701-Contact: Public Information Office at (903) 566-7170; Wednesday, March 11, 1992 at 1:30 p.m., John H. Reagan Office Building, Room 105, 105 West 15th Street, Austin, Texas 78711-Contact: Vicki Gossett, Texas Community Development Program, at (512) 320-9585; Thursday, March 12, 1992 at 5:30 p.m., La Posada Hotel, Philip V Room, 1000 Zaragosa, Laredo, Texas 78040-Contact: Juan Vargas, South Texas Development Council, at (512) 722-3995; Monday, March 16, 1992 at 1:30 p.m., Panhandle Regional Planning Commission, 2736 West 10th, Amarillo, Texas 79105-Contact: Gary Pitner, Panhandle Regional Planning Commission, at (806) 372-3381; Tuesday, March 17, 1992 at 6 p.m., Rio Grande Council of Governments Conference Room, 1014 North Stanton, Suite 100, El Paso, Texas 79902-Contact: Justin Ormsby, Rio Grande Council of Governments, at (915) 533-0998.

Issued in Austin, Texas, on February 19, 1991.

TRD-9202481 Anne O. Paddock
Assistant General Counsel
Texas Department of Housing and Community Affairs

Filed: February 19, 1992

For further information, please call: (512) 320-9571

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Texas Department of Human Services

Invitation to Bid

The Texas Department of Human Services (DHS) announces an invitation to bid (ITB) for purchased food stamp issuance services. DHS uses a competitive procurement process to ensure and document that services are of the highest quality, lowest price, and best meet the needs of the clients served.

Description of Services: Over-the-counter food stamp issuance is the exchange of food coupon booklets for authorization to participate (ATP) forms. ATP forms will specify client name, case number, ID and issuance numbers, total benefit amount, number of each denomination booklets to be issued, and month valid. Food stamp clients will present issuance agent with ATPs and ID cards. Issuance agent will check to see that the ID card serial number matches the corresponding number on the ATP form. If they match and the ATP is valid for the current month, the client will sign the ATP form in the presence of the issuance agent, who will then exchange the indicated number of each denomination of booklets for the signed ATP form. The issuance agent will write the issuance verification code (from the ID card) on the ATP form, date stamp the ATP form, and later batch it for daily delivery to DHS. To contract with DHS, the contractor must comply with all insurance requirements specified in the ITB, including providing an all-risk insurance policy naming DHS as the quaranteed loss payee.

Geographical Area: DHS will procure over-the-counter food stamp issuance service in Taylor County only.

Terms of Contract: The contract will be for one 12-month period. DHS has the option to renew the contract on a noncompetitive basis for a limited number of additional periods. The contractor will be paid a fee per transaction basis for each eligible ATP form processed.

Procedures for Awarding Contract: Only bids meeting the requirements of the procurement will be considered for contract award. A contract will be awarded to the lowest bidder whose bid meets the specified requirements.

Contact Person: To request an ITB package or additional information, please contact Margarette Kaylor at (512) 450-3467. SEALED BIDS must be received by Margarette Kaylor no later than 3 p.m., May 1, 1992, at Issuance Services Unit (W-320), Client Self-support Services Division, Texas Department of Human Services, 701 West 51st Street, P.O. Box 149030, Austin, Texas 78714-9030.

Issued in Austin, Texas, on February 19, 1992.

TRD-9202483 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Filed: February 19, 1992

For further information, please call: (512) 450-3765

♦ ♦ ♦

Texas Department of Public Safety, Division of Emergency Management

Hazard Mitigation Grant Program Project Outline Deadline

For those state and local governments, private non-profit organizations, and Indian tribes or authorized tribal organizations located within counties declared eligible for federal disaster assistance as a result of flooding that occured in Texas during December 1991 and January 1992, the deadline for submission of hazard mitigation project outlines to the Texas Department of Public Safety (DPS) Division of Emergency Management (DEM) is 60 days after the county's major disaster declaration date.

For further information please call: (512) 465-2449.

Issued in Austin, Texas, on February 14, 1992.

TRD-9202413 Robert A. Lansford
State Coordinator
Texas Department of Public Safety, Division of Emergency Management

Filed: February 18, 1992

For further information, please call: (512) 465-2000

♦ ♦ ♦

Railroad Commission of Texas

Correction of Error

The Railroad Commission of Texas submitted adopted new §§11.1001-11.1005, 11.1021, 11.1031-11.1045, 11.1061-11.1065, 11.1081 Chapter 11, concerning Surface Mining and Reclamation Division. The rules were published in the November 12, 1991, *Texas Register* (16 TexReg 6585).

The errors are as follows.

Due to an error in submission §11.1034 was not published, it should read.

"§11.1034. Barrier Construction Standards.

(a) A barrier may consist of guardrail, fence, berm, barricade or other devices, that in the opinion of the commission will prevent the normal passage of vehicular traffic from entering a quarry or pit.

(b) Barriers shall be located as near as practicable to the edge of the quarry or pit section identified as being in hazardous proximity to a public road.

(c) The height of a barrier must be at least twice the mid-axle height of the largest motor vehicle that usually travels the public road adjacent to the quarry or pit but in no instance may the barrier be less than 42 inches high.

(d) A barrier must have openings to the extent necessary for travel on the premises and for public road drainage, although such drainage paths must be covered with protective material, substantial enough to turn away motor vehicular traffic that normally travels the adjacent public road.

(e) Construction material and design standards:

(1) Berms shall be constructed of consolidated material with a top width of no less than two (2) feet and side slopes being in a ratio of 2 units in the horizontal direction to 1 unit in the vertical direction.

(2) Line posts for guardrails may be either wood or metal. Wooden posts shall be treated and no less than 6" in diameter. Metal posts shall be rolled or welded steel of the specification W6x8.5 or W6x9.0, as stated in American Institute for Steel Construction specifications for W Shape Beams.

(3) Line posts shall be no less than 84-inches long with no less than 42-inches in the ground. Steel posts shall be set in concrete. The line posts shall be spaced no more than 6'-3" apart.

(4) Rail elements shall be of steel construction fabricated to develop continuous beam strength and be formed into not less than 12 inches wide and 3 inches deep. The rail thickness shall be of no less than 12 gauge.

(5) Rail elements shall be placed facing the public road. At least two rail elements shall be mounted on the vertical line posts to form the safety barrier. The bottom edge of the lower rail shall be 12 inches above the ground. The rails shall be spaced 6 inches apart.

(6) Rail elements shall be attached to the line posts by means of nuts and bolts which completely penetrate the line posts. Nuts and bolts shall conform to the requirements of ASTM Designation A307."

Section 11.1036(b) should read: The quarry safety plan must be in writing, certified and sworn to by the applicant and must be filed with the Surface Mining and Reclamation Division at least 60 days prior to the opening of the pit.

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State Securities Board

Corrections of Error

The State Securities Board proposed amendments to 7 TAC Chapter 117, concerning Administrative Guidelines for Registration of Real Estate Programs. The rules were published in the February 7, 1992, *Texas Register* (17 TexReg 984).

The errors are as follows:

Section 117.1(b)(19)-"Expert" should be substituted for "exert" in the first line.

Section 117.5(o)(1)-"Program's" should be substituted for "programs" in the twenty-fourth line.

Section 117.7(d)(4)-A semi-colon instead of a colon should appear before the word "and" in the last line.

Section 121.1(b)(26)(B)-A comma should be substituted for the period in the fourth line.

Section 121.1(b)(27)-A comma should appear between the words "partnership" and "trust" in the second line.

Section 121.8(c)(2)-The entire text should appear in bold print, not just the number.

Section 121.9(d)(1)-"Omissions" should be substituted for "commissions" in the sixteenth line.

Section 121.9(d)(4)-")" should be placed before the period in the eighth line.

Section 121.9(d)(5)-"Section 121.8(c)" should be substituted for "Section 128(c)" in the fifth line.

Section 121.8(d)(1)(J)-The words "leases to be part" should appear after the word "on" in the third line.

Section 139.6-The word "record" should be substituted for the word "records" in the fourteenth line.

Section 141.1(b)(5)-Only "(5)" should be in bold print.

Section 141.1(b)(15)-"Expert" should be substituted for "exert" in the first line.

Section 141.6(b)(5)-A comma instead of a period should appear after "sponsor" in the second line.

Section 141.6(d)-"Copy" should be substituted for "coy" in the fifth line.

♦ ♦ ♦

Senate Interim Committee on Health and Human Services

Public Meeting Notice

The Senate Interim Committee on Health and Human Services (committee) will hold it's second work session in Austin on March 4, 1992, to further discuss and adopt committee recommendations pertaining to private psychiatric and substance abuse services.

The work session will begin at 1:30 p.m. in Room 103 of the John H. Reagan Building at 105 West 15th Street. Visitor parking is available at 15th Street and Congress Avenue. Although the committee does not plan to take any testimony, the work session is an open meeting, and the public is encouraged and welcome to attend.

If you have any questions or need additional information, please feel free to call the committee office at (512) 463-0360.

Issued in Austin, Texas, on February 14, 1992.

TRD-9202363 Sandra Bernal-Malone
Committee Clerk
Senate Interim Committee on Health and Human Services

Filed: February 14, 1992

For further information, please call: (512) 463-0360

♦ ♦ ♦

Teacher Retirement System of Texas

Report of Balance Sheet, Actuarial Valuation, and Unfunded Liabilities

Section 4, Chapter 929 (Senate Bill 1105), Acts of the 71st Texas Legislature, Regular Session, 1989, requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than March 1 of each year. The report must contain the balance sheet of the retirement system as of August 31 of the preceding fiscal year and an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following report as required by statute.

Summary of Actuarial Report Requested by State Auditor.

The State Auditor's office has requested that we summarize the results of the actuarial valuation of the Teacher Retirement System of Texas as of August 31, 1991. The actuarial valuation report reveals that the Teacher Retirement System of Texas is an actuarially sound system based on the current actuarial assumptions and that the present actuarial value of assets ($28.9 billion) plus the contributions required by the law in the future will be sufficient to meet the payments to the present active and retired members and their beneficiaries.

The actuarial assumptions and methods used in this valuation are those adopted by the board based on the 1990 Experience Study.

Mortality for the retired members is based on the 1983 Group Annuity Mortality Table for males with a two-year setback in age and the 1983 Group Annuity Mortality Table for females with a one-year setback in age. An extensive study of actual mortality experience of retired members under the System indicates that these mortality tables are appropriate.

Mortality for active members is based on a table constructed from the actual experience of the Teacher Retirement System of Texas.

Disability, retirement, and withdrawal rates are based on actual experience of the Teacher Retirement System of Texas. Retirement and withdrawal rates take a select and ultimate form.

An investment return assumption of 8%, compounded annually, is used with regard to computations for retired persons and for active members. An interest rate of 8.38%, compounded annually, is used with regard to the 1975 Legislative increase for retired members; a rate of 9.56%, compounded annually, is used with regard to the 1977 Legislative increase; a rate of 10.30%, compounded annually, is used with regard to the 1979 Legislative increase; a rate of 14.32%, compounded annually, is used with regard to that portion of the two 1981 Legislative increases which was not funded by reserves released from the Retired Reserve Account.

The salary scale for projecting future salaries is based on the actual 1985-1990 experience of the Teacher Retirement System of Texas and consists of a step-rate/promotional salary scale table plus a general salary increase assumption of 5-3/4%.

The actuarial value of assets is determined under a market over book adjusted asset valuation method which recognizes unrealized appreciation in equity market values over a five-year rolling period.

Funding of the unfunded actuarial accrued liability is based on the excess of assumed future state contributions over the amount of such contributions required to fund the normal cost of benefits provided by the system. Basing the normal cost for the system on a study of all new entrants hired in the period from 1985 through 1990, the normal cost is 12.35% of payroll (6.40% by members plus 5.95% by the state), which is 1.36% of payroll less than the total contributions being paid by the members and by the state. It is assumed that the excess amount of 1.36% of payroll contributed by the state will be utilized to fund the unfunded actuarial accrued liability of $3.429 billion (as shown on the actuarial balance sheet) over a period of 28.0 years in the future, assuming that payroll grows at an aggregate compound rate of 6.0% per year. All funding calculations assume that the state contribution rate will remain at 7.31%.

Based on the above assumptions and the actuarial results shown in the report, it is our opinion that the Teacher Retirement System of Texas is actuarially sound and the payroll in the future increases at the rate of 6.0% compounded annually, the unfunded actuarial accrued liability of $3.429 billion will be amortized over a period of 28.0 years in the future.

Respectfully submitted,

Richard B. Mallett, F.S.A.

Actuary

W. Michael Carter, F.S.A.

Actuary

Actuarial Balance Sheet Showing Present and Prospective Assets and Liabilities After Actuarial Adjustment to Retired Reserve Account

ACTUARIAL ASSETS

	August 31, 1991 (1)	August 31, 1990 (2)
I. Present assets at actuarial value:		
1. Retired Reserved Account (actuarially determined)	$ 10,929,565,625	$ 9,471,607,905
2. 1975 Benefit Increase Reserve Subaccount	1,467,998	6,712,538
3. 1977 Benefit Increase Reserve Subaccount	65,786,360	67,158,025
4. 1979 Benefit Increase Reserve Subaccount	49,779,119	50,294,848
5. 1981 Benefit Increase Reserve Subaccount	173,583,122	171,254,686
6. Member Savings Account	6,818,836,902	6,193,479,905
7. State Contribution Account	5,976,263,580	5,900,083,372
8. Expense Accounts and Miscellaneous	50,711,335	45,264,825
9. Total Present Assets	$ 24,065,994,041	$ 21,905,856,104
10. Adjustment to book value due to actuarial asset valuation method	4,793,545,670	4,205,479,061
11. Total actuarial value of present assets	$ 28,859,539,711	$ 26,111,335,165
II. Prospective assets:		
12. Present value of future contributions by present members	$ 8,926,835,454	$ 8,383,704,531
13. Present value of future normal costs contributed by the State	8,299,167,336	7,846,623,459
14. Unfunded actuarial accrued liability	3,429,188,337	3,343,395,972
15. Total Prospective Assets	$ 20,655,191,127	$ 19,573,723,962
16. TOTAL ACTUARIAL ASSETS	$ 49,514,730,838	$ 45,685,059,127

Actuarial Balance Sheet Showing Present and Prospective Assets and Liabilities After Actuarial Adjustment to Retired Reserve Account (Continued)

ACTUARIAL LIABILITIES

	August 31, 1991 (1)	August 31, 1990 (2)
III. Present value of benefits presently being paid:		
17. Benefits other than Legislative Increases for retired members		
a. Service retirement benefits	$ 10,200,376,816	$ 8,817,043,285
b. Disability retirement benefits	394,556,136	351,609,418
c. Death benefits	258,936,744	222,778,260
d. Present survivor benefits	75,695,929	80,176,942
e. Total basic reserves	10,929,565,625	9,471,607,905
18. Benefits provided retired members by 1975 Legislative Increase		
a. Service retirement benefits	26,885,232	30,586,788
b. Disability retirement benefits	589,368	672,025
c. Death benefits	1,535,532	1,585,644
d. Total 1975 Increase reserves	29,010,132	32,844,457
19. Benefits provided retired members by 1977 Legislative Increase		
a. Service retirement benefits	35,450,304	39,305,004
b. Disability retirement benefits	1,089,216	1,193,919
c. Death benefits	1,779,816	1,828,092
d. Total 1977 Increase reserves	38,319,336	42,327,015
20. Benefits provided retired members by 1979 Legislative Increase		
a. Service retirement benefits	24,476,160	27,693,432
b. Disability retirement benefits	558,096	640,554
c. Death benefits	1,314,696	1,353,960
d. Total 1979 Increase reserves	26,348,952	29,687,946
21. Benefits provided retired members by 1981 Legislative Increases		
a. Service retirement benefits	113,584,104	122,761,908
b. Disability retirement benefits	3,000,996	3,744,770
c. Death benefits	3,658,404	3,732,660
d. Total 1981 Increase reserves	120,243,504	130,239,338
22. Total present value of benefits presently being paid	$ 11,143,487,549	$ 9,706,706,661

Actuarial Balance Sheet Showing Present and Prospective Assets and Liabilities After Actuarial Adjustment to Retired Reserve Account (Continued)

		August 31,	
		1991	1990
		(1)	(2)
IV.	Present value of benefits payable in the future to present active members:		
23.	Service retirement benefits	$ 34,356,237,377	$ 32,091,753,837
24.	Disability retirement benefits		
	a. Disability prior to vesting	3,035,340	2,856,148
	b. Disability after vesting	1,163,646,921	1,085,270,462
	c. Total disability benefits	1,166,682,261	1,088,126,610
25.	Refunds of contributions on withdrawal	1,601,636,756	1,496,279,286
26.	Death and survivor benefits		
	a. Two times pay	192,105,490	200,120,963
	b. Refund of contributions	3,462,057	3,215,206
	c. Five year annuity	114,023,577	116,939,444
	d. Life annuity	374,932,576	457,466,323
	e. Survivor benefit	26,978,575	7,690,861
	f. Total death benefits	711,502,275	785,432,797
27.	Total active member liabilities	$ 37,836,058,669	$ 35,461,592,530
V.	Present value of benefits payable in the future to present inactive members:		
28.	Terminated vested participants		
	a. Retirement benefits	$ 40,036,328	$ 40,088,301
	b. Death benefits	913,576	1,324,534
	c. Total term vest benefits	40,949,904	41,412,835
29.	Refunds of contributions to terminated non-vested members	7,578,761	8,133,587
30.	Future survivor benefits payable on behalf of present annuitants	416,463,486	398,722,485
31.	Total inactive liabilities	$ 464,992,151	$ 448,268,907
VI.	Other liabilities and reserves:		
32.	Reserve for expenses, and benefits and accounts payable	70,192,469	68,491,029
33.	TOTAL ACTUARIAL LIABILITIES	$ 49,514,730,838	$ 45,685,059,127

Issued in Austin, Texas, on February 18, 1992.

TRD-9202490 Wayne Blevins
Executive Director
Teacher Retirement System of Texas

Filed: February 19, 1992

For further information, please call: (512) 397-6400

♦ ♦ ♦

The University of Texas System

Consultant Proposal Request

Consulting Services Request For Proposal. The University of Texas System Administration, in accordance with the provisions of Texas Civil Statutes, Article 6252-11c, solicits to contract with a consultant to conduct an extensive nationwide executive search for qualified candidates for the position of vice chancellor for asset management.

Project Description. The consultant selected shall assist The University of Texas System Administration (U. T. System) in developing a list of qualified persons for the position of vice chancellor for asset management. A summary of the tasks to be provided by the consultant include: provide U. T. System with an outline of the procedures and methodology to be utilized in the conduct of the search, including recommended criteria and qualifications for nomination and selection; identify qualified individuals interested in accepting the position; recommend five to 10 such individuals to U. T. System for consideration and conducting appropriate background checks; schedule candidate interviews including appropriate travel arrangements in accordance with state travel rules and procedures; evaluate and develop resumes for each of the recommended candidates; provide regular reports on the status of the search and be available to consult with U. T. System by telephone, in writing, or in persons as requested during the contract period.

This contract will be for a four-month period, beginning on or about April 1, 1992, provided the consultant fulfills all contract requirements and provides the quality of work desired. Any extension of time or additional work assignments resets at the option of U. T. System.

Contract. Information concerning the proposal may be obtained from Trennis Jones, System Personnel Director, The University of Texas System Administration, 201 West 7th Street, Austin, Texas 78701.

Procedure For Selection of Consultant. The U. T. System intends to use the services of Korn/Ferry International, unless a better offer is received from a consultant possessing the necessary qualifications and experience to provide the requested services in a timely manner.

To be considered, interested consultants should demonstrate superior recognized expertise in conducting searches for chief executives and administrators of trust and endowment funds, and venture capital funds for state or other similar agencies. Proposals will be evaluated by U. T. System on the basis of qualified experience, principal availability, and cost considerations. Interested consultants must provide descriptive detail on their background and involvement/participation in similar executive searches. The U.T. System reserves the sole right to determine the best qualified consultant on the basis of these responses.

A resume fully describing the entity and principals directing the search must accompany the proposal.

Due Date. Proposals must be received by the System Personnel Director no later than 5 p.m., March 1, 1992.

Issued in Austin, Texas, on February 18, 1992.

TRD-9202441 Arthur H. Dilly
Certifying Official
The University of Texas System

Filed: February 18, 1992

For further information, please call: (512) 499-4402

♦ ♦ ♦

Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission submitted adopted new §§133. 300-133.304, concerning Medical Benefits-General Medical Provisions. The rules were published in the February 7, 1992, *Texas Register* (17 TexReg 1106).

The submission contained errors as published. The errors are as follows.

On page 1106, in column 3, paragraph 5 of the preamble should read "Regarding §133.304, one commenter suggested revising the next to the last sentence in subsection (j)..."

Section 133.300(h) line two should read "If the audit delays payment, the carrier shall pay no less than 50% of the amount billed no later than the 45th day..."

Section 133.301(a)(7) should read "accuracy of coding in relation to the medical record and reports;"

Section 133.302(b)(1) should read "the employee's full name, address, and social security number;"

♦ ♦ ♦

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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