

# Texas Register

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- Secretary of State - opinions based on the election laws
- Texas Ethics Commission - summaries of requests for opinions and opinions
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- Proposed Sections - sections proposed for adoption
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- Adopted Sections - sections adopted following a 30-day public comment period
- Open Meetings - notices of open meetings
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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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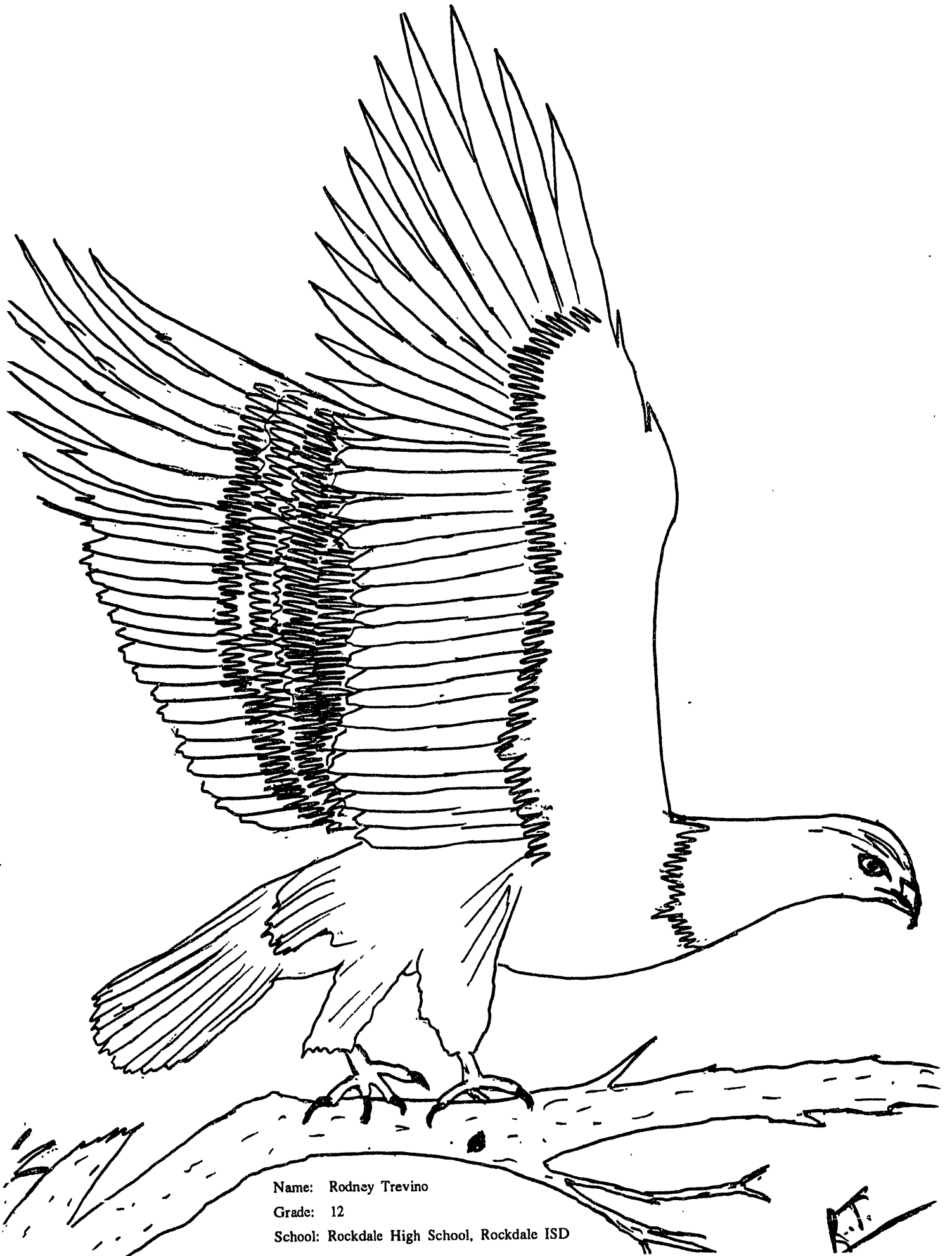
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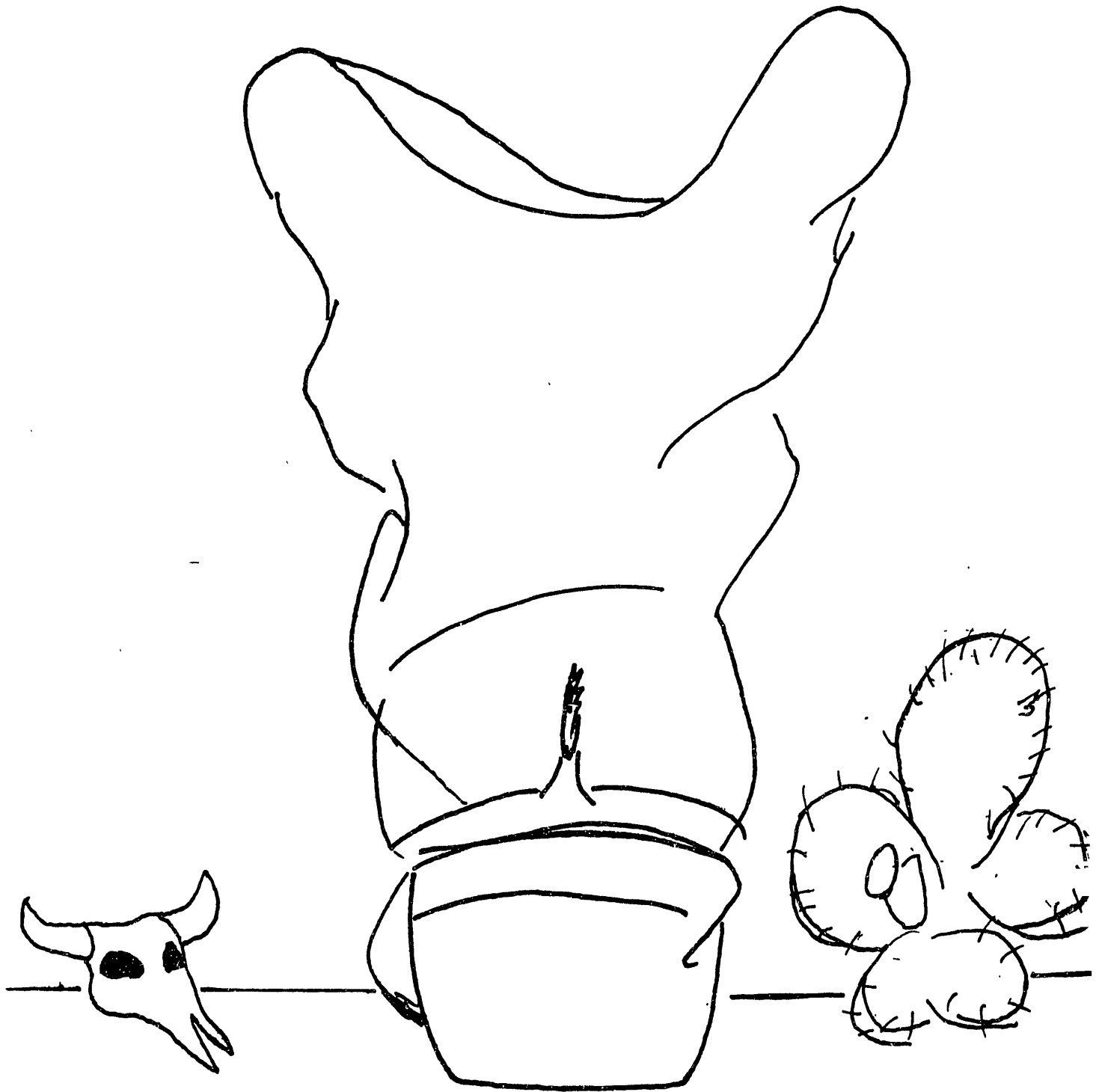
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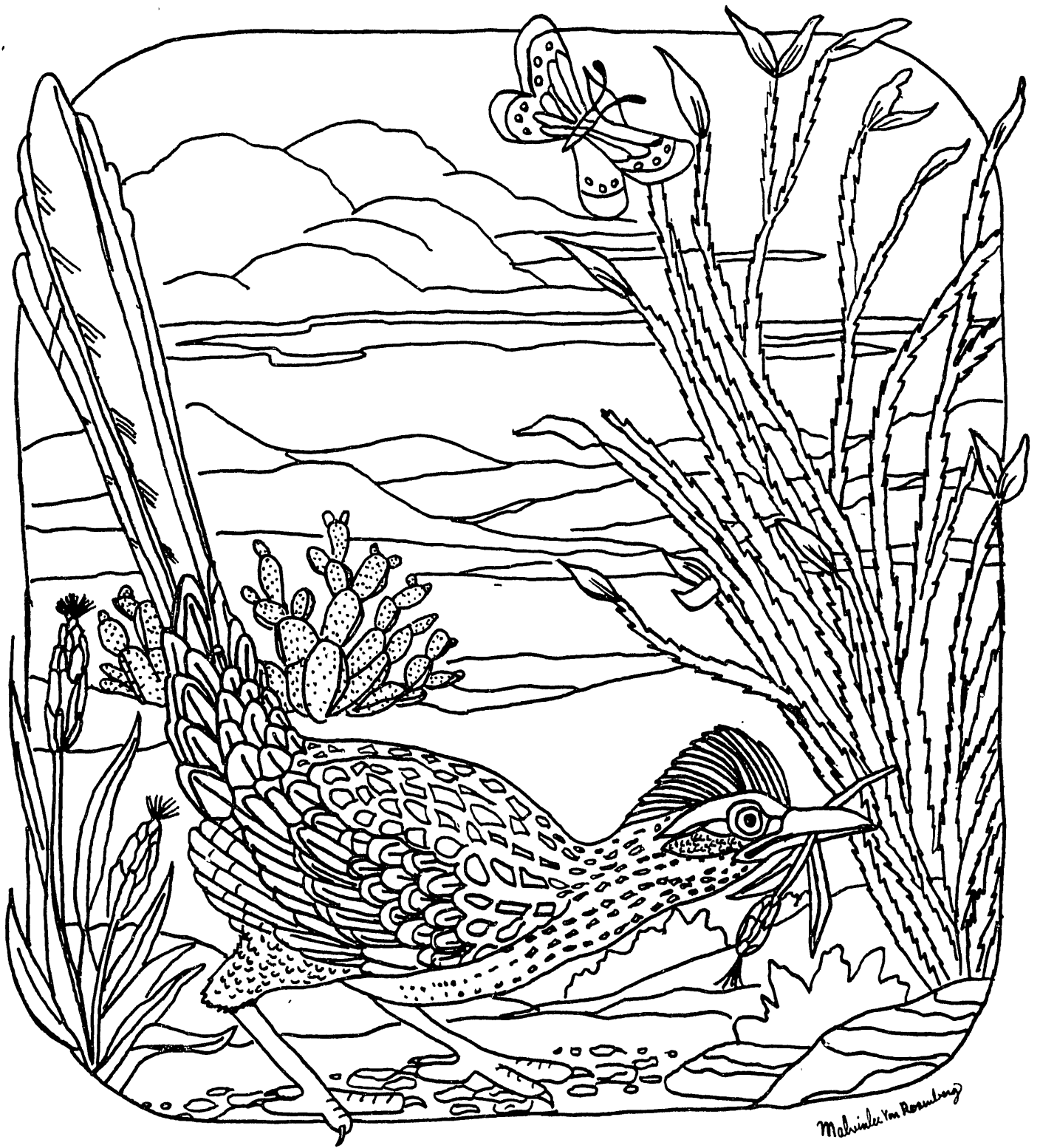


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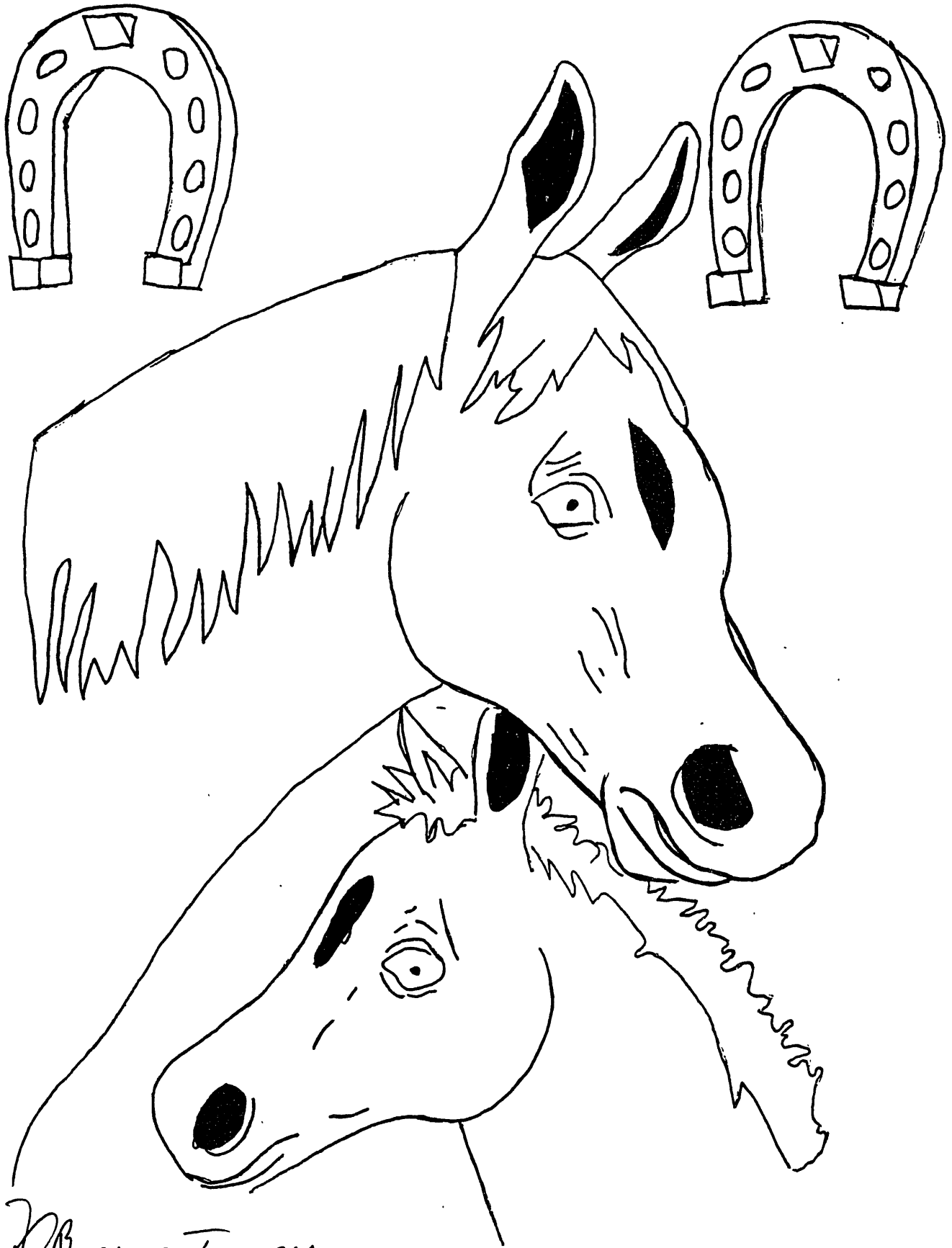




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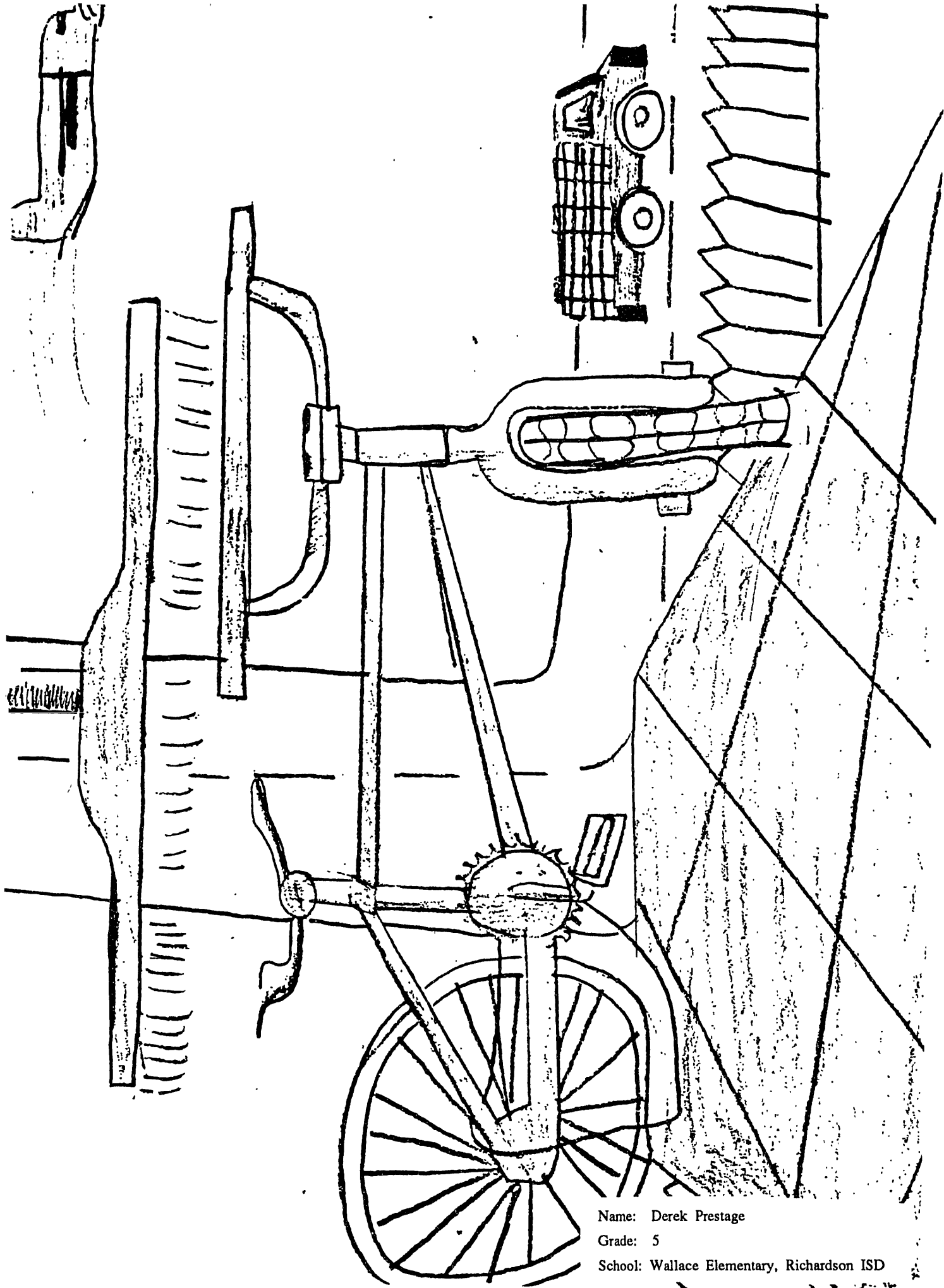
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# Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Opinions

**EAO-1.** Concerning whether an appointed officer of a state agency that is not listed as a "major" state agency must file a financial disclosure statement under Texas Civil Statutes, Article 6252-9b, if the officer does not receive a salary.

**Summary of Opinion.** Article 6252-9b, as amended, requires "every state officer" to file an annual financial disclosure statement. This includes appointed officers who hold non-salaried positions. This current requirement to file a statement based on the previous year's financial activity is not retroactive or unconstitutional as to those appointed officers who were appointed before the amendment's effective date.

**EAO-2.** Concerning whether a person registering as a lobbyist may report on his initial registration form the total amount of compensation that the registrant expects to receive in 1992 compensation (AOR-1).

**Summary of Opinion.** A registrant filing an initial registration and renewal form under section 305.005 of the Government Code must disclose Compensation actually received at that time for the year, either by actual amount or as a category amount. Anticipated Compensation is not to be reported.

**EAO-3.** Concerning whether certain activities trigger lobby registration requirements (AOR-2).

**Summary of Opinion.** A person who communicates with a member of the executive or legislative branch of state government is not required to register as a lobbyist under the Government Code, Chapter 305 if the person makes no expenditures other than expenditures for his own travel and lodging and receives no compensation other than reimbursement for his own travel and lodging.

**EAO-4.** Concerning whether an association of owners of recreational facilities may provide free family passes to legislators and certain members of the executive branch (AOR-3).

**Summary of Opinion.** An association's transfer of a free pass for use of recreational facilities would be a direct communication for purposes of the Government Code, Chapter 305.

Such a transfer for the purpose of generating goodwill among members of the legislative and executive branches and for the purpose of giving legislators insight into industry problems would be to influence administrative or executive action.

The transfer of such a pass would be reportable as "entertainment." Thus, an association may provide such a pass only if the registrant is present each time the pass is used.

**EAO-5.** Concerning whether certain activities of a lawyer in representing a client before the Office of the Comptroller of Public Accounts and in tax refund suits against the state require the lawyer to register as a lobbyist (AOR-6).

**Summary of Opinion.** A lawyer who has met the compensation or reimbursement threshold and who represents a taxpayer in a hearing before the Office of the Comptroller of Public Accounts for redetermination or refund is not engaging in an activity or communication that would require the lawyer to register as a lobbyist.

A lawyer who has met the compensation or reimbursement threshold and who communicates with the legal representative of a state agency concerning litigation to which the agency is a party is not engaging in activity or communication that requires registration as a lobbyist.

A lawyer who has met the compensation or reimbursement threshold and who makes a request for information is not engaging in activity or communication that would require the lawyer to register.

A lawyer who has met the compensation or reimbursement threshold and who requests a written opinion from the agency, which cites statutory and other law in support of a particular viewpoint, is not thereby engaging in activity or communication that would require the lawyer to register.

**EAO-6.** Concerning determination to accept or refuse a political contribution (AOR-7).

**Summary of Opinion.** The determination to refuse a political contribution and the return of a political contribution are distinct for purposes of the Election Code, Title 15. Once a determination to refuse a contribution has been made, the contribution must be returned within 30 days after the dead-

line for filing a report for the reporting period during which the contribution is received.

**EAO-7.** Concerning whether a person filing a report under the Election Code, Title 15 may substitute a form for the form prescribed by the Ethics Commission (AOR-9).

**Summary of Opinion.** A person filing a report under the Election Code, Title 15 may not substitute a form in place of the prescribed form or a page in place of a page of the form adopted by the commission unless the commission has approved the use of the substitute form. For an attachment to be approved, the attachment must be of the same paper size as the prescribed form. The information must appear on the attachment in substantially the same format as it would have appeared on the prescribed form.

**EAO-8.** Concerning interpretation of confidentiality provision set out in Texas Civil Statutes, Article 6252-9b, §1.21 (AOR-10).

**Summary of Opinion.** A person who intends to file a sworn complaint with the Ethics Commission may discuss with the press or the public the fact he intends to file a complaint and the contents of the proposed complaint. A person who has filed a sworn complaint with the commission may discuss with the press or the public the fact that he has filed a complaint and the contents of the complaint.

The commission must give notice of a sworn complaint to the respondent within 14 days after the commission receives the complaint, and as part of that notice, the commission must identify the complainant and the nature of the complaint.

The respondent to a sworn complaint with the commission may discuss the fact that the complaint has been filed and the contents of the complaint.

The Ethics Commission may release to the public the contents of a sworn complaint, including the name and address of the complainant, if that information is entered into the record of a formal hearing or a judicial proceeding.

**EAO-9.** Concerning whether nonprofit water supply corporations are "political subdivisions" for purposes of the Government Code, Chapter 305 (AOR-11).

**Summary of Opinion.** Nonprofit water

supply corporations are not political subdivisions for purpose of the Government Code, Chapter 305 and Ethics Commission rules adopted under the chapter.

**EAO-10.** Concerning whether certain activities of a corporate political action committee are proper (AOR-13).

**Summary of Opinion.** No provision in the Texas Election Code prohibits a corporation from being established just to form a political committee. There are no restrictions in the Election Code on who may make political contributions to a corporate political committee. A political committee whose principal purpose is limited to supporting or opposing an identified city measure may not file its campaign treasurer appointment with the Ethics Commission. It is required to file its campaign treasurer appointment with the city secretary. The improper filing of a campaign treasurer appointment can be the basis of a sworn complaint to the Ethics Commission.

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: (1) Texas Civil Statutes, Article 6252-9b; (2) the Government Code, Chapter 302; (3) the Government Code, Chapter 305; (4) the Election Code, Title 15; (5) the Penal Code, Chapter 36; (6) the Penal Code, Chapter 39.

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

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

TRD-9205889

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Director, Advisory Opinions  
Texas Ethics Commission

Filed: April 29, 1992

For further information, please call: (512) 463-5800

## Requests for Opinions

**AOR-27.** The Texas Ethics Commission has been asked to consider a number of questions about the application of the Government Code, Chapter 305 to various kinds of contact between employees of an engineering firm and representatives of governmental bodies. The requestor asks about the application of Chapter 305 to the engineering firm as well as to the individual employee making contact with representatives of governmental bodies.

The first question is about the application of Chapter 305 to a situation in which an employee of an engineering firm discusses a new air pollution control technology with staff members of the Texas Air Control Board. The discussion takes place at a lunch paid for by the employee of the engineering

firm, and the employee seeks to convince the staff members that the technology should be promulgated as a standard by the agency. In the alternative, the discussion takes place in the Air Control Board offices.

In the next situation a member of an engineering firm asks a Texas Department of Transportation official what highway construction projects are being planned by the department.

Another question is whether Chapter 305 applies to a hunting trip that includes firm employees and state officials and that is paid for by an engineering firm. The requestor also asks whether the answer depends on what is discussed during the trip.

A similar question is whether Chapter 305 applies to an employee of an engineering firm who accompanies an employee of a state agency to a sporting or cultural event and pays for tickets and food. The firm does business with the state agency. Again, the requestor asks whether the answer depends on what is discussed during the event.

The requestor also asks about the application of Chapter 305 to the following situations.

(a) A member of an engineering firm takes an official of the Texas Department of Transportation to lunch to inquire about what highway construction projects are being planned by the department. The engineering firm employee spends much of the luncheon extolling the merits of the engineering firm.

(b) An employee of an engineering firm has lunch with a member of the Texas Department of Transportation to convince the department to change the routing of a planned road if an engineering firm client will pay for the road.

(c) An engineering firm employee has lunch with an official of a government entity which is covered by the Lobby Registration Law to convince the official of the merits of going to a sole source purchase rather than utilizing a request for bids. Assume such a change is in the discretion of the official.

(d) An engineering firm employee has lunch with an official of a government entity which is covered by the Lobby Registration Law to convince the official of the merits of going to a sole source purchase rather than utilizing a request for bids. Assume such a change would require an amendment of a regulation, a change the official can influence but not unilaterally make.

(e) A government entity which is covered by the Lobby Registration Law promulgates a fee curve schedule whereby a set percentage of each construction project awarded by the entity is allowed for engineering for a construction project. For example, the entity allows 3.0% of the construction cost for

engineering. An engineering firm employee visits with an entity official to convince such official that the percentage is inadequate for all construction projects.

(f) A government entity which is covered by the Lobby Registration Law promulgates a fee curve schedule whereby a set percentage of each construction project awarded by the entity sets a fixed percentage allowed for engineering for a construction project. For example, the entity allows 3.0% of the construction cost for engineering. An engineering firm employee visits with an entity official to concentrate on increasing the percentage for a particular construction project for which bids are about to be requested by the entity.

The requestor also asks whether a flood control district or a metropolitan transit authority is a state agency for purposes of Chapter 305.

**AOR-28.** The Texas Ethics Commission has been asked to consider several questions about the interpretation of Texas Civil Statutes, Article 6252-9b, §7A.

The first question is whether a former division head in a state agency is a "member of the governing body or executive head of a regulatory agency" for purposes of §7A.

The second question is whether a state employee who tendered his resignation in 1991, effective on January 31, 1992, is subject to §7A even if the employee took vacation time during all of January.

The third question is whether a former state employee covered by §7A(a) may give his new employer or a client of his new employer advice in regard to an audit of the client by a state agency if the former state employee worked on the audit during his tenure at the state agency. The requestor also asks whether the former state employee could give his new employer or a client of his new employer advice in regard to a subsequent audit of the same client.

**AOR-29.** The Texas Ethics Commission has been asked to consider whether unsalaried board members of state agencies may make political contributions to candidates for public offices. The commission has also been asked to consider whether unsalaried board members may make contributions to candidates seeking the position of speaker of the house of representatives.

**AOR-30.** The Texas Ethics Commission has been asked to consider whether a judge, as an officeholder, may use campaign funds to purchase electronic equipment that will be used in connection with litigation before the judge.

**AOR-31.** The Texas Ethics Commission has been asked about the application of the Government Code, Chapter 305 to certain consultants. The consultants in question

work with businesses to help them obtain permits from agencies such as the Air Control Board, the Water Commission, and the Department of Health. The consultants' activities might include: (1) filing for permits; (2) negotiating about the terms of permits; (3) negotiating about the manner in which to abate a permit violation; and (4) discussing the best available technology for a certain operation. Another example is that a consultant may negotiate with the Workers' Compensation Commission for approval of an employer's safety program. The question presented is whether these activities, for which the consultants are compensated, require the consultants to register as lobbyists under Chapter 305.

**AOR-32.** The Texas Ethics Commission has been asked to consider whether certain employees of the Texas Guaranteed Student Loan Corporation may be required to register as lobbyists under the Government Code, Chapter 305.

**AOR-33.** The Texas Ethics Commission has been asked to consider whether a corporation may provide a place to hunt and furnish lodging for various categories of people. The first question raised is whether the Government Code, Chapter 305, the lobby statute, permits the corporation to provide these things for elected or appointed members of state government.

Another question is whether elected or appointed members of state government may accept these things and whether elected or appointed city officers or city employees may accept them.

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

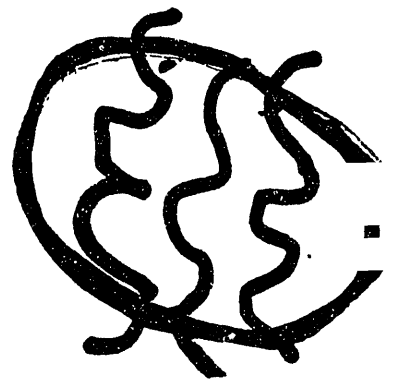
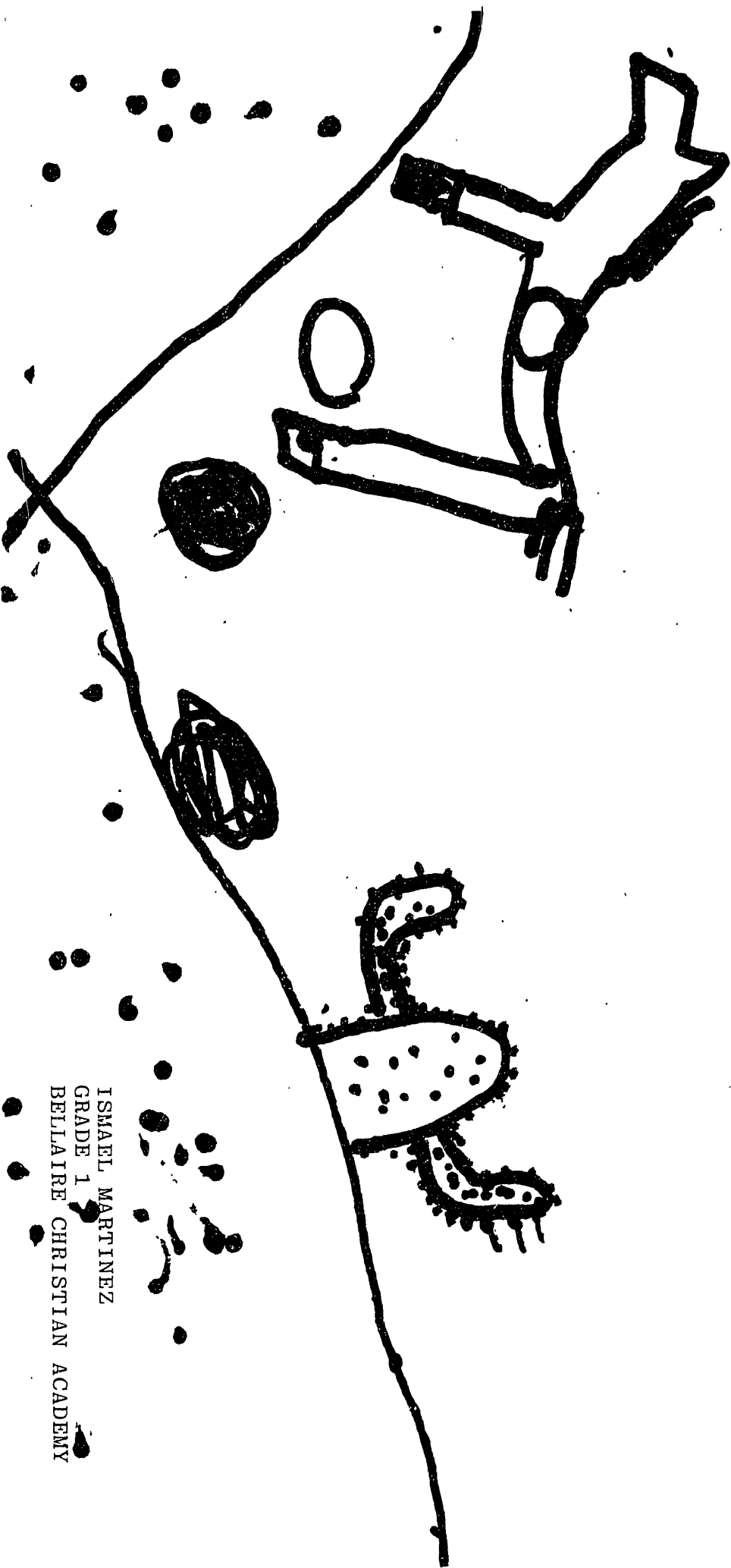
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Filed: April 28, 1992

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# Emergency Sections

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

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

## TITLE 1. ADMINISTRATION

### Part II. Texas Ethics Commission

#### Chapter 6. Campaign Financing

##### Subchapter C. Rules Concerning Reports

###### • 1 TAC §6.27, §6.29

The Texas Ethics Commission adopts on an emergency basis new §6.27 and §6.29, concerning the setting of guidelines, requirements, and exceptions in regard to campaign reports required to be filed by political parties accepting corporate or labor union contributions, and the reporting schedule for a candidate for state chair, and the reporting schedule for a political committee supporting or opposing a candidate for state chair.

The commission has determined that adoption of these sections as soon as possible is in the public interest and is necessary to comply with the Texas Election Code, Title 15, which governs the reporting of campaign contributions and expenditures by candidates, political parties, and political committees. As criminal and civil sanctions may be imposed for violation of provisions of Title 15, it is in all candidates' best interest and welfare that these rules be adopted so that they may comply with those provisions.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 6252-9d.1(1.11)(b)(9), which provide the Texas Ethics Commission with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act. The commission is charged by statute with the enforcement and administration of the Election Code, Title 15, Texas Civil Statutes, Article 6252-9d.1(1.11)(a)(1)).

###### *§6.27. Reporting Schedule of a Political Party Accepting Corporate Or Labor Union Contributions.*

(a) Beginning of period. The beginning day of the period that the reports required by this rule are to cover is the later of: the stated date; the day the political party began accepting corporate or labor union contributions; or the first day after the period covered by the last required report.

(b) Reports. A political party that

has accepted corporate or labor union contributions authorized by the Texas Election Code, §253.104, shall file the following reports on the following dates until the political party is no longer accepting corporate or labor union contributions and the acceptance and expenditure of all such funds has been reported.

(1) Semiannual report. A semiannual report shall be filed not later than July 15, covering the period beginning January 1 and continuing through June 30. A report shall be filed not later than January 15, covering the period beginning July 1 and continuing through December 31.

(2) Primary election report. A report shall be filed for each primary election held by the political party. The report shall be filed not later than the eighth day before the primary election, covering the period beginning January 1st and continuing through the 10th day before the primary election.

(3) General election report. One report shall be filed for the general election for state and county officers. The report shall be filed not later than the 50th day before the general election, covering the period beginning July 1 and continuing through the 61st day before the general election for state and county officers.

(c) Forms. The political party shall use the reporting forms prescribed by §6.17 of this title (relating to Political Party Sworn Report of Contribution and Expenditures).

(d) Filing of reports by mail. The Texas Election Code, §251.007, which authorizes the mailing of a report or other document by the deadline for filing such document, applies to any report filed by a political party accepting corporate or labor union contributions.

###### *§6.29. Reporting Schedule for a Candidate for State Chair, and for a General-Purpose or Specific-Purpose Political Committee Supporting or Opposing such a Candidate.*

(a) Beginning of period. The beginning day of the period that the reports required by this rule are to cover is the later of: the stated date; the day after the period covered by a previous report by a committee; or the day of the initial appointment of

campaign treasurer for the candidate or committee.

(b) Reporting forms. A candidate for state chair shall use the reporting form prescribed by §6.14 of this title (relating to State Chair Candidate/Officeholder Sworn Report of Contributions and Expenditures). A committee shall use the reporting form required under the Election Code, Chapter 254.

(c) Filing of reports by mail. The Texas Election Code, §251.007, which authorizes the mailing of a report or other document by the deadline for filing such document, applies to campaign treasurer appointments by state chair candidates and to reports of contributions and expenditures to be filed by state chair candidates and committees under this rule.

(d) Semiannual reports by candidates for state chair. A candidate for state chair of a political party with a nominee on the ballot in the most recent gubernatorial general election shall file semiannual reports. A report shall be filed not later than July 15, covering the period beginning January 1 and continuing through June 30. A report shall be filed not later than January 15, covering the period beginning July 1 and continuing through December 31.

(e) Semiannual reports by committees supporting or opposing candidates for state chair. A general-purpose political committee or a specific-purpose political committee supporting or opposing a candidate for state chair of a political party shall include all contributions accepted and all expenditures made for such a candidate on its semiannual reports required by §254.123 and §254.153 which are due January 15 and July 15.

(f) Reports. Each candidate for state chair and each general-purpose political committee or specific-purpose political committee supporting or opposing a candidate for state chair of a political party shall file the following reports covering the following periods.

(1) Thirtieth day before convening of convention report. Each candidate and each political committee supporting or opposing a candidate for state chair of a political party shall file a report not later than the 30th day before the convening of



the state convention. The report covers the period beginning the first day after the period covered by the last period required to be reported by this rule and continuing through the 40th day before the convening.

(2) Eighth day before convening of convention report. Each candidate and each political committee supporting or opposing a candidate for state chair of a political party shall file a report not later than the eighth day before the convening of the state convention. The report covers the period beginning the 39th day before the convening of the state convention and continuing through the 10th day before the convening.

Issued in Austin, Texas, on April 28, 1992.

TRD-9205908 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: April 29, 1992

Expiration date: August 27, 1992

For further information, please call: (512) 463-5800

## Chapter 11. Speaker of the House of Representatives

### Subchapter A. Campaign Reporting

#### • 1 TAC §§11.1, 11.3, 11.5, 11.7, 11.9

The Texas Ethics Commission adopts on an emergency basis Chapter 11, speaker of the house of representatives, §§11.1, 11.3, 11.5, 11.7, and 11.9, concerning definitions, guidelines, requirements, and exceptions in regard to campaign finances for candidates for the speaker of the house.

The commission has determined that adoption of these sections as soon as possible is in the public interest and is necessary to comply with the Texas Government Code, §302.001, and following, which governs the campaign finances for those candidates running for speaker of the house of representatives. Criminal penalties may result for a violation of the provisions of the Government Code, Chapter 302.

The new sections are adopted under Texas Civil Statutes, Article 6252-9d.1(1.11)(b)(9), which provide the Texas Ethics Commission with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act. The commission is charged by statute with the enforcement of administration of the Government Code, Chapter 302 (see Texas Civil Statutes, Article 6252-9d.1(1.11)(a)(1)).

**§11.1. Definition.** Campaign funds—For purposes of the Government Code, Chapter 302, "campaign funds" as defined in §302.011 shall include "interested earned" and shall include "interest paid."

**§11.3. Termination of Candidacy.** For purposes of the Government Code, §302.213, a speaker candidate is considered to have terminated the candidacy when the candidate is no longer seeking the office or is ineligible to seek the office.

**§11.5. Contents of Sworn Report of Contributions and Expenditures.** Each report required to be filed with the commission pursuant to Government Code, §302.013, shall set forth the total amount of interest earned during the reporting period.

**§11.7. Permitted Expenditures.** As required by the Government Code, §302.020, a speaker candidate shall not expend campaign funds for any purpose other than those permitted by §302.020, and then only if those expenditures are directly related to the speaker candidacy.

**§11.9. Segregation of Campaign Funds.** All contributed campaign funds shall be maintained in accounts separate and apart from any other accounts.

Issued in Austin, Texas, on April 28, 1992.

TRD-9205912 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: April 29, 1992

Expiration date: August 27, 1992

For further information, please call: (512) 463-5800

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 11. Herbicide Regulations

#### • 4 TAC §11.1, §11.2

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to §11.1 and §11.2, concerning regulated counties and special provisions for regulated counties.

The department is acting upon orders issued by county officials in Archer, Clay, and Wichita Counties establishing those counties as counties regulated under the Texas Agriculture Code (the Code), Chapter 75 and requests from county officials for the establishment of a prohibition period for the application of 2, 4-D esters in those counties. County officials have requested that the applications of 2,4-D esters be prohibited in Archer, Clay, and Wichita Counties from May 1 to September 15 of each year.

The department believes that the establishment of a prohibition period as requested is appropriate and necessary. Climatic condi-

tions in Archer, Clay, and Wichita Counties during the period between May 1 and September 15 are not conducive to the use of the volatile ester formulations of 2,4-D and applications of 2,4-D esters during that period have resulted in harm to susceptible crops in those counties. Further, it is necessary that the adoption of the addition of Archer, Clay, and Wichita Counties to the regulated county list and the prohibition period be effective immediately so that losses to producers in Archer, Clay, and Wichita Counties due to 2,4-D ester exposure may be minimized during the 1992 crop season.

The emergency amendment to §11.1 adds Archer, Clay, and Wichita Counties to the list of counties regulated under the Code, Chapter 75. The emergency amendment to §11.2 adds special provisions for Archer, Clay, and Wichita Counties providing for a prohibition of the spraying of 2,4-D ester in those counties for the period between May 1 and September 15 of each year.

The amendments are adopted on an emergency basis under the Code, §75.018, which gives the department the authority to consider a request for revision of a section, and exemption from a requirement of the Code, Chapter 75, or prohibition of spraying in one area and to adopt rules as the department deems appropriate; and Texas Civil Statutes, Article 6252-13 (a)(5), which provide for the adoption of the administrative rules on an emergency basis, without notice and comment.

**§11.1. Counties Regulated.** The following counties shall be subject to all of the provisions of the Texas Agriculture Code, Chapter 75 (1981), unless specifically excepted by the provisions of §11.2 of this title (relating to County Special Provisions): Aransas, Archer, Austin, Bell, Bexar, Brazoria, Brazos, Briscoe, Burleson, Calhoun, Clay, Cochran, Collin, Collingsworth, Cottle, Culberson, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, El Paso, Falls, Foard, Forth Bend, Frio, Gaines, Galveston, Hall, Hardin, Harris, Haskell, Hidalgo, Houston, Judspeith, Jackson, Jefferson, Karnes, Kaufman, King, Knox, Lamar, Lamb, Liberty, Loving, McLennan, Martin, Matagorda, Midland, Milam, Motley, Newton, Orange, Parmer, Rains, Reeves, Refugio, Robertson, Rockwall, Runnels, San Patricio, Swisher, Travis, Tyler, Waller, Ward, Wharton, Wichita, Wilbarger, Williamson, and Wilson.

**§11.2. County Special Provisions.**

(a)-(ll) (No change.)

(mm) Archer, Clay, Wichita. Applications of 2,4-D esters are prohibited for the period beginning May 1 and ending September 15 of each year.

Issued in Austin, Texas, on April 28, 1992.

TRD-9205896 Dolores Alavardo Hibbs  
Chief Administrative Law

Judge  
Texas Department of  
Agriculture

Effective date: April 29, 1992

Expiration date: August 27, 1992

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





SETH CASH  
GRADE 8  
BELLAIRE CHRISTIAN AC

# 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 6. Campaign Financing

##### Subchapter C. Rules Concerning Reports

###### • 1 TAC §6.27, §6.29

*(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 §6.27 and §6.29, concerning the filing of reports by political parties accepting contributions from corporations and labor unions, and the reporting schedule of candidates for state chair of a political party and the committees that support or oppose them.

Jim Mathieson, assistant 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. Mathieson 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 compliance with the mandates of the Texas Election Code, Title 15, which requires the filing of certain reports with 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, 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning campaign financing under the Texas Election Code, Title 15.

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 April 28, 1992.

TRD-9205907 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: June 5, 1992.

For further information, please call: (512) 463-5800

##### Chapter 11. Speaker of the House of Representatives

##### Subchapter A. Campaign Reporting

###### • 1 TAC §§11.1, 11.3, 11.5, 11.7, 11.9

*(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 §§11.1, 11.3, 11.5, 11.7, and 11.9, concerning campaign reporting for candidates seeking the post of speaker of the house of representatives. These sections set forth the definition of "campaign funds" and the termination of candidacy, contents of sworn reports, permitted expenditures, and the segregation of campaign funds.

Jim Mathieson, assistant 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. Mathieson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to comply with the Texas Government Code, Chapter 302 by setting forth the requirements and guidelines to be followed by speaker candidates. 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 establish, promulgate, and adopt rules concerning the filing of sworn reports by speaker candidates.

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 April 28, 1992.

TRD-9205909 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: June 5, 1992

For further information, please call: (512) 463-5800

##### Chapter 13. Practice and Procedure

##### Subchapter A. General Guidelines

###### • 1 TAC §13.1

The Texas Ethics Commission proposes new §13.1, concerning substitution or replication of forms. This section allows the executive director to approve substitute forms to be filed in lieu of forms adopted by commission rules and the guidelines therefore.

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

Mr. Mathieson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to more easily file information with the commission if it is in substantially the same format as required by commission rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Mathieson, 1101 Camino La Coasta, Austin, Texas 78752. Only written comments will be accepted.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning matters affecting the commission.

§13.1. Substitution or Replication of Forms.

(a) A report filed with the commission shall be filed on the appropriate form adopted by commission rule, or:

(1) on a report, form, or format established by other applicable statute or rule, or

(2) on a substitute form or format that has been approved and certified under subsections (b) and (c) of this section.

(b) The executive director may approve and certify a form or format for filing reports with the commission if he or she finds that the form or format:

(1) provides for disclosure of all the information required or requested on the form adopted by commission rule;

(2) is substantially similar in paper size and color, layout, and format to the form adopted by commission rule;

(3) the executive director determines that use of the substitute form or format will not be confusions to those who obtain information from that form.

(c) The approval and certification of a form or format by the executive director shall be written, signed by the executive director, include the effective date of the certification, and state that certification may be revoked if the form adopted by commission rule is revised and the substitute form no longer qualifies for approval and certification under subsection (b) of this section.

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

Issued in Austin, Texas, on April 28, 1992.

TRD-9205913 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: June 5, 1992

For further information, please call: (512) 463-5800

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Part V. General Services  
Commission

Chapter 125. Travel and  
Transportation Division

Travel Management Services

- 1 TAC §§125.1, 125.3, 125.5,  
125.7, 125.9, 125.11, 125.13,  
125.17, 125.19, 125.21, 125.23

The General Services Commission proposes amendments to §§125.1, 125.3, 125.5, 125.7, 125.9, 125.11, 125.13, 125.17, 125.19, 125.21, and new §125.23, concerning the

State Travel Management Program. The amendments describe participation in the State Travel Management Program; contracting with more than one travel agency; reporting requirements for state agencies; and make non-substantive technical changes. The new section implements the recommendations of the Texas Performance Review by requiring state agency travel coordinators to facilitate travel management operations and establishes a travel advisory group.

Michael N. Powers, director, travel and transportation, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing and administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated reduction in cost of \$1,833,500 for fiscal year (fy) 1992; \$1,871,500 for fy 1993; \$1,871,500 for fy 1994; \$1,871,500 for fy 1995; and \$1,871,500 for fy 1996. There will be no effect on local government.

Mr. Powers also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a reduction in State of Texas business travel costs and expenditures through better travel management policies, practices, and coordination, resulting in savings in taxpayers dollars. There may be minimal impact on small business. It is estimated that the impact may average \$2,000 in gross revenues each year for each of the estimated 100 travel agents that are currently processing the additional travel volume that will be required to be under contract as a result of these proposed rules. 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 Judith M. Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 601b, §14.01, which provide the General Services Commission with the authority to promulgate rules necessary to implement the provisions of Texas Civil Statute, Article 601b, Article 14.

§125.1. General.

(a) The travel and transportation division of [Pursuant to Texas Civil Statutes, Article 601b, §§14.01-.02 and §14.04-.05.] the commission administers [a program to provide services for centralized management control and coordination for all official business travel undertaken by state employees. This program, known as] the State Travel Management Program[, is administered by the Travel and Transportation Division of the commission].

(b) [Services provided by the] State Travel Management Program services are provided [available] to state agencies, [and

state] their employees, elected or appointed officers, and other persons entitled to reimbursement for business expenses incurred on behalf of the state, regardless of the source of funds used to pay the travel expenses. [as defined in §125.3 of this title (relating to Definitions). Services are also available to other persons traveling on behalf of state agencies, as defined in §125.3 of this title (relating to Definitions), when their travel expenses are paid by the state in accordance with established guidelines of the Comptroller of Public Accounts.]

(c) [Services provided by the State Travel Management Program are available regardless of the source of funds (e.g., local funds, bond monies, and grants) used to pay for expenses incurred on business travel on behalf of the state.]

(d) It is [shall be] the policy of the commission to administer the travel program State Travel Management Program so as] to provide timely and efficient travel services to state agencies and to generate savings, whenever possible. [in an economical way resulting, wherever possible, in savings to the State of Texas.]

(d)[(e)] Pursuant to Texas Civil Statutes, Article 601b, §14.04, fees, including any] Fees and other revenue from the program[,] will be deposited in the state treasury to the credit of the general revenue fund unless another disposition is required by federal law.

(f) State agencies desiring travel services provided by the commission shall submit a travel service requisition to the commission requesting certain travel services.]

(e)[(g)] These rules are intended [issued so as] to be consistent with the [provisions of the "[Travel Allowance Guide]" as issued] published by the Comptroller of Public Accounts [and are not intended in any way to replace or take precedence over such provisions].

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

Award—The [official] act of accepting a bid or proposal [the commission which results in a contract with a bidder whose response to a request for proposal is successfully accepted by the commission] .

City pair—A one-way airline flight between two cities, from origin to destination, regardless of stopovers or connections.

Discount Rate—A price for a travel service established by the commission.

Director—The director of the travel [Travel] and transportation [Transportation] division [Division] of the [State Pur-

chasing and] General Services Commission.

Executive director—The executive director of the [State Purchasing and] General Services Commission.

Facility—A [The specific] building[, lodging establishment, meeting hall, or convention center] used for [the purpose of] meetings, conventions, conference, and seminars.

[Location—A specific city, town, municipality, or other geographic point where a meeting, convention, conference, or seminar is held.

Negotiated rate—A price for a travel service negotiated by the commission.]

Rental car—A vehicle [that is] not owned by the State of Texas[, but is utilized by state employees for a use or rental fee].

[Sites election—The act of determining a specific location and facility for conducting a planned meeting, convention, conference, or seminar, taking into account various factors affecting cost and service levels.]

State agency—

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

(C) A university system or an institution of higher education as defined in the Texas Education Code, §61.003, other than a public junior college. [(Pursuant to Texas Civil Statutes, Article 601b, §14.05, institutions of higher education located in Travis County are excluded from the provisions of Texas Civil Statutes, Article 601b, §14.02, until the services provided by the State Travel Management Program become of statewide applicability.)]

Texas State Travel Directory—The directory published by the travel and transportation division, at least annually, which lists travel vendors and applicable current rates.

[State Travel Management Program—One of the programs developed and administered by the Travel and Transportation Division of the commission.]

Travel agent—Any individual, corporation, association, partnership, [association,] company, or firm [which has been] designated as an [a duly] appointed airline industry agent [of the airlines] by the Airlines Reporting Corporation or [and] the International Airlines Travel Agent Network, [or] an airline, or a company, corporation, association, partnership, or firm owned by an airline or group of airlines which provides travel reservations and ticketing services [and is not subject to appointment and certification by the Airlines Reporting Corporation or the International Airlines Travel Agent Network to provide such services].

[Travel and Transportation Division—A division of the State Purchasing and General Services Commission as created by Texas Civil Statutes, Article 601b, §2.09].

**§125.5. [Delineation of] Available Services. The State Travel Management Program services are [The program consists of four component parts as follows].**

(1) Travel agent services—[By way of service contracts established between the commission and private travel agents, services provided to state employees include] reservation and ticketing services for airline, hotel, and rental car requirements **under contracts established by the commission.**

(2) Charge card services—[State sponsored] charge accounts and cards are available for [to state employees for the purpose of paying for expenses incurred on official] state business use. [travel. Payment of expenses billed to charge card accounts are paid through individual billing to cardholders or through billing to central locations at the option of participating state agencies with the concurrence of the commission.]

(3) Discount [Negotiated] rate services—discount rates for travel services are established [negotiated] by the commission [with travel vendors for use by state employees during official business travel. Notification of available rates is given to state employees through provision of the State Travel Directory which is published by the commission.]

(4) [Group/]meeting services [Services] —assistance is provided to state agencies with site selection, rate negotiation, and contracting for [sponsoring or conducting] meetings, conventions, conferences, and seminars. [Such assistance includes, but is not limited to, site selection, rate negotiation, and contract formulation.]

**§125.7. Travel Agent Services**

(a) (No change.)

(b) Travel agent services are provided under contracts between selected travel agents and the commission [on behalf of the state. The commission represents the state in the formulation of such contracts]. **The commission shall contract with at least six but no more than 10 travel agents, to ensure representation of the geographic regions of the state with significant populations of state employees.**

(1) These [Contracted] services are available to all [participating state] agencies, **in accordance with §125.19 of this title (relating to Participation by State Agencies).**

(2) The length of the contracts is [are] determined by [agreement between contracting travel agents and] the commission. [Emphasis is placed upon securing contract terms which correspond to predetermined state biennium periods.]

(3) State agencies may [request to] begin participation [in the travel agent services portion of the program] at any time during the term of a [any travel agency] contract, with the concurrence of the commission.

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

(e) Funds [which are] returned to the commission through [the administration of] this [portion of the] program are deposited in the state treasury [State Treasury] to the credit of the general revenue fund [General Revenue Fund], **unless federal law requires a different disposition.**

**§125.9. Charge Card Services.**

(a) Charge accounts and cards are provided for official business use. [to employees of participating state agencies for the purpose of providing alternative means of paying for expenses incurred on official business travel in addition to other payment mechanisms which may already be in place. Charge card] Accounts [accounts] may be established for individual state employees, the participating agency, or both [and/or for participating state agencies as single entities].

(b) Charge card services are provided [by way of a written] **under** contract established between the commission and the selected charge card company.

(1) Contracted services are available to all participating state agencies **in accordance with §125.19 of this title (relating to Participation by State Agencies).**

(2) State agencies may begin [initiate] participation in the charge card services portion of the program at any time during the term of a contract with the selected charge card company with the concurrence of the commission.

(3) **No employee is required to accept or use a state charge card. An employee may use a personal charge card for state business and be reimbursed under standard procedures.**

(c) Participating state agencies may choose [how they wish] to have charges billed as follows.

(1) Individual billing. All official business [travel] charges [incurred by individual state employees] are billed directly to the individual employee [them] who is reimbursed through standard travel voucher procedures. [Payments for such charges billed are initiated by individual account holders with funds reimbursed through normal travel voucher procedures.]

(2) Central billing. All charges allowed by the General Appropriations Act, Article V, are billed to the agency [one

specified address]. The agency pays [Payment is initiated by the specified participating state agency to] the charge card company through established voucher payment procedures processed through the Comptroller of Public Accounts.

(d) A state agency shall approve issuing a charge card to an employee if the employee is expected to take at least three trips or spend at least \$500 per fiscal year for state business. The agency shall cancel a charge card upon the employee's termination of employment, and it may cancel a card if the employee does not comply with subsection (e) of this section or with any other provision of charge card use established by the agency.

(e) By accepting a charge card, the employee accepts the responsibility for paying all charges timely and agrees that the charge card is intended for state business use. Payment of charges on individual cards is the sole responsibility of the individual. The state shall not be responsible for the charges, regardless of the type of charge, nor shall the state be liable for non-payment by the employee.

#### *§125.11. Discount [Negotiated] Rate Services.*

(a) Discount rates for travel and transportation services for state employees are provided [negotiated] by contracts between the commission and selected travel vendors[, pursuant to the authority of Texas Civil Statutes, Article 601b, §14.02].

(b) These [Discount] rates [established under this portion of the program] are to be used by state agencies in accordance with §125.19 of this title (relating to Participation by State Agencies [available for use by all state agencies]).

(c) (No change.)

(d) The [existence of] discount rates will be published in [established under this portion of the program shall be made known to state employees through] the Texas State Travel Directory [which shall be published by the commission] at least annually or more often as deemed necessary by the commission.

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

#### *§125.13. [Group] Meeting Services.*

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

(c) At the request of a state agency, the commission will provide the following services [Basic services provided by the commission are as follows].

(1) Assistance in selecting a location and facility for a meeting. [Site Selection-] The commission [provides assis-

tance, as requested, in selecting locations and facilities for specific meetings. The commission] will consider [shall take into consideration such aspects as] transportation costs for attendees; availability of facilities and [on those dates requested;] the ability of facilities to meet space, equipment and catering needs; costs for obtaining meeting space and lodging [accommodations, as required]; and other factors the commission deems[deemed] to be important [by the commission] in recommending sites to state agencies [requesting such assistance].

(2) Assistance in negotiating the most favorable facility, travel, and related costs and rates. [Cost/Rate Negotiation-The commission provides assistance in negotiating on behalf of the state for the most favorable travel and/or facility related costs and rates with travel vendors for specified meetings or other group functions.]

(3) Assistance in negotiating contracts with facilities and travel vendors. [Contract Formulation-The commission assists state agencies in formulating contracts, when required, with travel vendors in support of any costs and rates negotiated for specified meetings or other group functions. The commission signs such contracts on behalf of requesting state agencies in accordance with subsection (e) of this section whereby the state agency has already certified availability of funds for payment of services pursuant to the contract.]

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

#### *§125.17. Travel Vendor Selection Process*

(a) The commission may contract for travel services through either competitive bidding, competitive sealed proposals, or negotiation at its discretion. [Pursuant to Texas Civil Statutes, Article 601b, §14.02(b), the commission may enter into contracts to provide travel services to state agencies without being subject to the competitive bidding requirements of Texas Civil Statutes, Article 601b, Article 3. Accordingly, the commission selects travel vendors through either competitive processes or individual cost negotiations at its discretion. Although emphasis is placed upon allowing for competition in making such selections, the actual determination as to the method followed is based in part on practical limitations involved in allowing for competition to take place.]

(b) When a competitive process [processes] is [are] deemed to be in the best interests of the state, [State and are determined to be a practical method for selecting the type of travel vendor at issue, then] the commission shall solicit competitive bids by issuing an invitation for bids, or competitive proposals by issuing [issuance of] a request for proposals [proposal]. For competitive bids, the division shall use

the procedures required by §113.10 of this title (relating to Delegated Purchases.) The following procedures shall be used for competitive proposals.

(1) Notice of the request for proposal shall be published [provided to prospective vendors through publication] in the *Texas Register* and mailed to [through direct solicitation of] prospective vendors who have asked [made previous requests to the commission] to be included on a bidders list for the type of services addressed in the request for proposal.

(2) As a minimum, a [the] request for proposal shall contain:

(A) a detailed statement of [work describing in detail] the services sought;

(B) (No change.)

(C) the criteria to be used [by the commission] in evaluating proposals for final awards;

(D) [a statement as to] the time, date, and place for submission of [established for prospective travel vendors to submit] proposals; and

(E) (No change.)

(3) A pre-proposal [When determined by the commission to be necessary, a pre-bidders] conference may be held after a request for proposal is issued [for the purpose of addressing any questions which may be asked by prospective travel vendors], if the commission determines one to be necessary. The time, date, and location of the [any such] conference shall be noted in the request for proposal .

(4) Proposals and the correct number of copies must be [are] submitted at the [specified] time, date, and place specified [with the appropriate number of copies as noted] in the request for proposal.

(5) The commission shall use [utilize] a proposal evaluation team to evaluate [for the purpose of evaluating] proposals [and for discussion with offerors regarding their proposals]. Members of the [The] proposal evaluation team shall be [comprised of members] selected by the commission at its discretion.

(6) The [At the request of the] proposal evaluation team may request [,] oral presentations by [may be required from] any or all offerors submitting proposals.

(7) During [any] discussions [and/] or oral presentations with offerors, no information from competing proposals shall

be made known to other offerors. Any type of auction practice or allowing the transfer of technical information is specifically prohibited as being inconsistent with fair competition.

(8) (No change.)

(9) Based upon the evaluation [results and recommendations] of the proposals [proposal evaluation team], the director shall determine [make a determination] and recommend to the executive director the [those] offerors chosen for contract awards.

(10) Awards [Award] shall be made to the offeror or offerors whose proposal(s) are most advantageous and are in the best interests of the state considering the evaluation criteria [as] set forth in the request for proposal. The commission may reject all proposals if none of the offers is acceptable or if rejection is in the best interest of the state.

(11) A notice of award shall be sent to the offeror or offerors whose proposals are accepted.

(12) The contract resulting from the competitive proposal process consists of the request for proposals, the accepted proposal, and the notice of award.

#### *§125.19. Participation by State Agencies.*

(a) Except as otherwise provided in this section, state agencies in the executive branch of state government shall participate in the program and use the travel agency, charge card, rental car, airline, hotel, and other travel service contracts that are effective for at least a 12 month term. Institutions of higher education are not required to use the travel agency contracts, but are required to use all other contracts. [Participation in the program is at the option of a state agency. Participation is encouraged in accordance with the intent of the legislature in utilizing the services provided by the program to the maximum extent consistent with improved economy and efficiency, as set forth in Texas Civil Statutes, Article 601b, §14.02(a).]

(b) A state agency that is not required to use the travel services contracts may do so at its option [may participate in the program at different levels of service whereby only selected portions of the program may be utilized, at the option of the state agency, to the exclusion of the other portions]. However, a state agency that uses [requests participation in the] travel agent services [portion of the program] must use the charge card services also [participate in the charge card portion as well].

(c) To begin participating in the travel agency and charge card contracts,

a state agency must send the commission a travel service requisition. [Participation in the program is initiated by a state agency by way of a travel service requisition, duly completed and signed by an authorized representative of the state agency and sent to the commission on a form prescribed by the commission. A travel service requisition is submitted only once by a state agency to request participation in the travel agent services and/or charge card services portions of the program.] An individual travel service requisition is required to request [group/meeting planning services for each separate group or meeting. Travel service requisitions are not required to use discount rates. [Submission of a travel service requisition by a state agency to the commission is not required to utilize negotiated rate services.]

(d) (No change.)

(e) A state agency not required to use the commission's contracts may terminate its participation by giving the commission at least 60 days' advance written notice [wishing to terminate participation in the program shall so notify the commission in writing at least 60 days prior to its desired last day of participation].

(f) The contracts for travel services must be used as required by §§125.1-125.21 of this title (relating to Travel Management Services) unless the conditions listed following exist. State agencies shall establish procedures to comply with this subsection and submit them to the commission for approval within 90 days after the effective date of this section. Travel agent contracts are not affected by the conditions listed in paragraphs (4)-(10) of this subsection:

(1) the traveler is already in travel status, which renders the use of a contract travel agent impractical or unnecessary;

(2) travel is undertaken as part of a group program for which reservations must be made through a specified source to obtain a specified rate or service;

(3) a contract travel vendor cannot provide services in the time period required to accomplish the purpose of the travel;

(4) a contract hotel is not available in a location that will reasonably allow the business requirements of a traveler to be fulfilled;

(5) a contract hotel or rental car company is unable to provide the required services because it is sold-out or does not offer services in the city being visited;

(6) alternative rental car or hotel arrangements can be made at a lower total cost than the contract hotels or rental car companies. For rental cars, total costs include the base rate, loss/damage waiver protection, mileage charge, applicable taxes, and surcharges. For hotels, the cost of the guest room net of taxes shall be used to compare total costs;

(7) a contract airline offers a fare lower by any amount than the contract fare;

(8) a non-contract airline offers a lower published fare to the general public which results in a lower total trip cost, including travel time, to the agency. However, lower or identical airfares offered to state travelers only are not included within this exception;

(9) travel is undertaken by persons with disabilities, by persons transporting prisoners or other persons in the custody of the state, or in a medical emergency;

(10) use of contract travel vendors may present a security or safety risk to the traveler.

(g) A state agency may submit a written request for exemption from the required use of one or more travel contracts. An exemption request must be submitted within 90 days after the effective date of this section or within 90 days after the effective date of a new travel contract. The commission will approve an exemption if it determines that such an exemption would provide an economic or service benefit to the state, taking into account any affect on the commission's contracts and ability to obtain favorable contracts in the future. An exemption expires when the related contract is terminated or replaced.

#### *§125.21. Reporting Requirements for State Agencies.*

(a) A state agency that does not use the commission's travel agent contracts shall submit travel data for monitoring and analysis of state travel costs and for use in rate negotiations with travel vendors. The travel data will be reported in the form and manner requested by the division to identify airline, hotel, and rental car use and expenses. [A state agency that chooses not to participate, or is not approved by the commission to participate, in both the travel agency services and charge card services portion of the program shall submit periodically, as specified by subsection (b) of this section, certain travel data for the purposes of the commission monitoring travel for the state as required by Texas Civil Statutes, Article



601b, §14.02(a). Data will be analyzed and compiled with travel data already provided to the commission through the contracted travel agencies and other available sources in order to provide statewide travel cost analysis and management reports. Data is also utilized in rate negotiations with travel vendors on behalf of the state. State agency travel data required to be submitted to the commission under this section shall include, but not be limited to, the following information:

(1) number of commercial airline trips, and total expenses incurred for commercial air fares;

(2) number of lodging reservations and room nights, and total expenses incurred for overnight lodging;

(3) number of commercial rental car rentals, days rented, and total expenses incurred for commercial rental car usage;

(4) a listing of the five most frequently visited destinations and total visits made to each; and

(5) a listing of all travel vendors used (e.g. airlines, lodging, and rental car vendors) and number of times each was utilized.]

(b) (No change.)

(c) A state agency required to use the commission's contracts for travel services may not establish a separate, similar contract without commission approval. The agency shall submit the proposed contract to the division for review and approval before the contract is signed. Contracts determined to be unfavorable to the state, or to have a negative affect on the commission's contracts will not be approved. Any separate contracts in effect before the effective date of this subsection must be submitted to the division for review and approval also. If an existing contract is not approved, the agency will terminate the contract at the earliest time permitted by the contract. [A state agency which enters into a written contract or agreement with a travel vendor separate from those contracts and agreements arranged by the commission shall provide a copy of such contract or agreement to the commission.]

#### §125.23. State Agency Travel Coordinators.

(a) State agencies in the executive branch of state government shall designate at least one employee of the agency to serve as the travel coordinator for the agency. The designated travel coordinator shall be responsible for the following:

(1) receiving and distributing travel information to employees of the agency;

(2) Coordinating with agency employees and travel vendors to ensure proper use of travel contracts;

(3) reviewing travel data reports for compliance with the contracts and §§125.1-125.21 of this title (relating to Travel Management Services);

(4) monitoring the agency's travel activities and reporting travel needs and problems to the commission;

(6) serving on a proposal evaluation team as requested.

(b) The state agency shall provide the name, address, and phone number of the designated travel coordinator to the division in writing. Changes are to be provided in writing also, within 30 days following the change.

(c) The commission shall establish a travel advisory group of agency travel coordinators and other state employees to promote better understanding and operation of the State Travel Management Program. This group may assist with preparation and evaluation of request for proposals, formulation of travel rules, or any other travel related issue.

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 April 27, 1992.

TRD-9205821

Judith M. Porras  
General Counsel  
General Services  
Commission

Earliest possible date of adoption: June 5, 1992

For further information, please call: (512) 463-3446

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 75. Air Conditioning and Refrigeration Contractor License Law

##### • 16 TAC §§75.20, 75.40, 75.80, 75.100

The Texas Department of Licensing and Regulation proposes amendments to §§75.20, 75.40, 75.80, and 75.100, concerning air conditioning and refrigeration contractors. Section 75.20, licensing requirements, adds a paragraph which describes the work a duct cleaning person can do without a license. Section 75.40, insurance requirement, adds the requirement that insurance coverage be submitted on the form furnished by the agen-

cy, to supply additional information and make processing more efficient. Section 75.80, fees, deletes the provision to assess one-half the fee as an administrative charge on refund requests. Section 75.100, technical requirements, brings air conditioning rules into agreement with the revised rule for boiler repairs in the boiler program, and to clarify the tasks an air conditioning and refrigeration contractor can perform on piping.

James D. Brush, director, policies and standards, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated reduction in cost for \$75.40 of \$0 for fiscal year (fy) 1992; \$500 for fy 1993; \$2,000 for fys 1994-1996 and an estimated loss in revenue for \$75.80 of \$375 for fy 1992; \$1,500 for fy 1993; \$1,500 for fy 1994; \$1,500 for fy 1995; and \$1,500 for fy 1996. There will be no effect on local government.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be better enforcement of the statute. 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 James D. Brush, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P. O. Box 12157, 920 Colorado, Austin, Texas 78711, (512) 463-7352.

The amendments are proposed under Texas Civil Statutes, Article 8861, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

#### §75.20. Licensing Requirements.

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

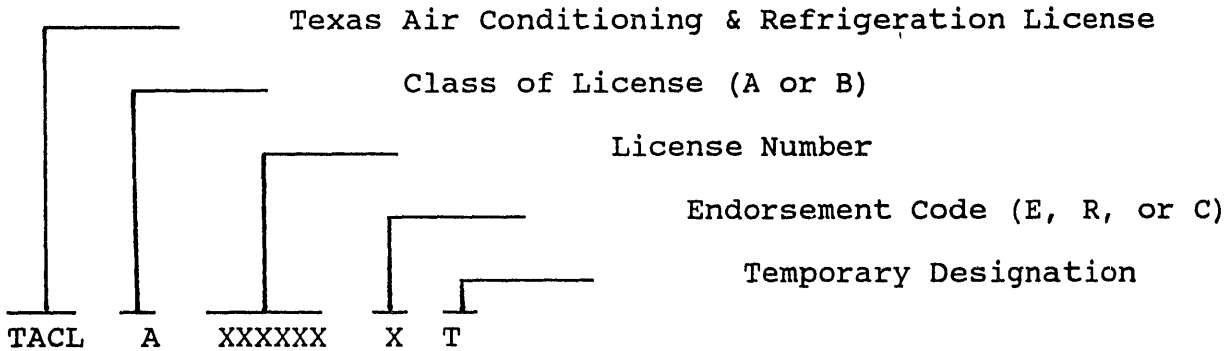
(c) Licenses.

(1)-(15) (No change.)

(16) Air duct cleaning may be performed by an unlicensed person or company if the task is limited to the air distribution system, from the discharge of the unit to the inlet of the unit, with no revisions, such as cutting, to the duct, and with no electrical connection.

(17)[(16)] A license issued by a municipality of this state is valid under the terms of the license within that municipality. However, a license issued under the Act is valid throughout the state, and the holder and people under supervision are not required to hold a municipal license to practice air conditioning and refrigeration contracting in any municipality within this state.

(18)[(17)] A family member of a contracting firm whose only licensee is no longer available due to death or disability may request a temporary license from the commissioner. If no family member is eligible to test for a license, the firm may request a temporary license for a current employee. If a partnership is unexpectedly dissolved, and that partnership has been contracting under a state license belonging to one of the partners, the unlicensed partner may request a temporary license. The request must be in writing and must state the reason for the request. The request must be accompanied by a completed application and exam fee for the person requesting the temporary license. A temporary license may be granted for a period extending 30 days beyond the date of the next exam period, not to exceed six months. The temporary license shall be of the same class and endorsement as the license needing to be replaced. The temporary license number will not be the same number to be assigned as a permanent license number. The temporary license shall be numbered by the department as follows.



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

(f) Reissuance.

(1) A license that has expired for a period of less than two years may be reissued upon submission of:

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

(D) evidence of experience with the tools of the trade as provided in the Act, §4(e) and subsection (a)(2) of this section, using the date of the application for renewal as the date for determining compliance with the Act, §4(e) [3] and subsection (a)(2) of this section.

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

**§75.40. Insurance Requirement.**

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

(d) A license applicant or holder shall furnish to the department a certificate of insurance as evidence of the insurance required in subsection (a) or (b) of this section. The license holder's name and address must be shown as it appears on the license. **The certificate form to be submitted shall be the form furnished by the department.** Binders and interim certificates of less than 60 days will not be accepted. The certificates of insurance shall be issued to each municipality where air conditioning and refrigeration contracting is performed.

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

**§75.80. Fees.** All fees should be paid by cashier's check or money order made pay-

able by cashier's check or money order made payable to the Texas Department of Licensing and Regulation.

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

[(6) Processing fee. One half of exam or license fees submitted for which a refund is requested will be retained as a processing fee.]

**§75.100. Technical Requirements.**

(a) Boilers.

(1) [Boilers used in the process of environmental air conditioning shall comply with the Texas Boiler Law, Texas Civil Statutes, Article 5221c, and Chapter 65 of this title (relating to Boiler Section).] **The Texas Boiler Law, the Health and Safety Code, Chapter 755, provides for rules [and regulations for] addressing the safe construction, installation, inspection, operating limits, alteration, and repair of**

boilers and their appurtenances. Those who alter or repair boilers or repair, test, set, or seal safety appliances must [performed under the scope of the Texas Boiler Law by those who] possess the applicable American Society of Mechanical Engineers certificate of authorization, [or] National Board of Boiler and Pressure Vessel Inspectors Authorization for use of the "R" or "VR" Stamp [certificate] or, in the case of owner/operators, a certificate of authorization issued by the department. These certificate holders are not required to hold a license as an air conditioning and refrigeration contractor.

(2) All others who [alter, construct, design,] install, maintain, [modify, repair,] or service boilers used in the process of environmental air conditioning, commercial refrigeration, or process cooling or heating must comply with the Texas Boiler Law, the Health and Safety Code, Chapter 755, [Texas Civil Statutes, Article 5221c.] and Chapter 65 of this title (relating to Boilers [Boiler Section]), and shall also hold the applicable class license as an air conditioning and refrigeration contractor.

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

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

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

TRD-9205787

Jack Garrison  
Acting Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: June 5, 1992

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

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 97. Communicable Diseases

The Texas Department of Health (department) proposes the repeal of existing §§97.1-97.15, 97.17, 97.18, and §97.22; proposes new §§97.1-97.15, 97.17, and 97.22; and proposes amendments to §§97.131, 97.132, 97.134, and 97.135, concerning communicable diseases.

The proposed repeal, new sections, and amendments involve major revisions in the format of the sections to enable the department to more clearly identify the rules and procedures for reporting communicable diseases. Also, changes will be made to the language in the new sections to correspond to the format changes. The language

changes are primarily in new §§97.1-97.4, 97.6, 97.8, 97.11, 97.12, and 97.17. The changes remove coccidioidomycosis, histoplasmosis, influenza and flu-like illness, leptospirosis, psittacosis, Q fever, Reye syndrome, toxic shock syndrome, and tularemia from the list of reportable diseases; add chancroid, relapsing fever, and invasive Group A Streptococcal disease to the list of reportable diseases; and clarify the description of some existing reportable diseases. In addition, major revisions have been made to the format used in the sections to more clearly identify the rules, regulations, and procedures for reporting.

Stephen Seale, Chief Accountant III, Budget Office, Texas Department of Health, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved reporting of reportable conditions leading to better control of those important public health conditions. There is no anticipated additional cost to small businesses nor to persons who may be required to comply with the sections as proposed. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Kate Hendricks, M.D., Bureau of Disease Control and Epidemiology, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7455. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register*.

#### Control of Communicable Diseases

- 25 TAC §§97.1-97.15, 97.17-97.18, 97.22

The repeals are proposed under the Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

##### §97.1. Definitions.

##### §97.2. Who Shall Report.

##### §97.3. Reportable Diseases and Health Conditions.

##### §97.4. Where To Report a Communicable Disease.

##### §97.5. Reporting and Other Duties of Local Health Authorities and Regional Directors.

##### §97.6. Diseases Requiring Exclusion from Child-care Centers and Schools.

##### §97.7. General Control Measures for Reportable Diseases.

##### §97.8. Quarantine of Specific Premises.

##### §97.9. Confidential Nature of Case Reporting and Records.

##### §97.10. Notification of Emergency Medical Service Employee, Peace Officer, or Fire Fighter of Possible Exposure to a Disease.

##### §97.11. Death of a Person with Certain Communicable Diseases

##### §97.12. Exposure of Health-Care Personnel to HIV or AIDS.

##### §97.13. Guidelines for Testing Certain Indicted Persons for Certain Diseases.

##### §97.14. Fee for Providing Written Notice of a Positive HIV-Related Test Result to an Applicant for Insurance.

##### §97.15. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection.

##### §97.17. Possible Exposure of State Employees to HIV.

##### §97.18. Fee To Cover the Cost of Providing the HIV Counseling and Testing Course.

##### §97.22. Exposure of Certain Persons to Reportable Diseases.

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 April 28, 1992.

TRD-9205866

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 27, 1992

For further information, please call: (512) 458-7455

- 25 TAC §§97.1-97.15, 97.17, 97.18, 97.22

The new sections are proposed under the Health and Safety Code, Chapter 81, which provides the Board of Health with the author-

ity to adopt rules concerning the reporting of communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

**§97.1. Definitions.** The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

**Act**—Communicable Disease Prevention and Control Act, Health and Safety Code, Chapter 81.

**AIDS**—Acquired immune deficiency syndrome, as defined by the Centers for Disease Control of the United States Public Health Service.

**Carrier**—An infected person or animal that harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source or reservoir for the infection of man.

**Case**—As distinct from a carrier, the term "case" is used to mean a person in whose tissues the etiological agent of a communicable disease is lodged and which usually produces signs or symptoms of disease. Evidence of the presence of a communicable disease may also be revealed by routine laboratory findings.

**Commissioner**—Commissioner of health.

**Communicable disease**—An illness due to an infectious agent or its toxic products which is transmitted directly to a well person from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

**Contact**—A person or animal that has been in such association with an infected person or a contaminated environment so as to have had opportunity to acquire the infection.

**Department**—Texas Department of Health.

**Disinfection**—Destruction of infectious agents outside the body by chemical or physical means directly applied.

**Epidemic or outbreak**—The occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.

**Health authority**—A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be the director of a local health department, a regional director, or another physician as appropriate.

**HIV**—Human immunodeficiency virus.

**HIV infection**—Confirmation by one of the following laboratory procedures:

(A) a serum specimen that is repeatedly reactive for HIV antibody by a licensed screening test (e.g., ELISA) and the same or an additional serum specimen that is positive by a subsequent test (e.g., Western blot, immunofluorescence assay); or

(B) a positive test for serum antigen; or

(C) a positive lymphocyte culture confirmed by specific HIV antigen test (not just reverse transcriptase detection) or by in situ hybridization using a Deoxyribonucleic acid (DNA) probe.

**Hospital laboratory**—Any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.

**Outbreak**—See definition of epidemic in this section.

**Physician**—A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.

**Regional director**—The physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121.

**Report**—Information that is required to be provided to the department.

**Report of a disease**—The notification to the appropriate authority of the occurrence of a specific communicable disease in man or animals, including all information required by the procedures established by the department.

**Reportable disease**—Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What to Report). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a "reportable disease."

**School administrator**—The city or county superintendent of schools, or the principal of any school not under the jurisdiction of a city or county board of education.

#### §97.2. Who Shall Report.

(a) A physician, dentist, veterinarian, or chiropractor shall report as required by these sections each patient or animal he or she shall examine and who has or is suspected of having any reportable disease or health condition, and shall report any outbreak, exotic disease, or unusual group expression of illness of any kind whether or not the disease is known to be communi-

ble or reportable. An employee from the clinic or office staff may be designated to serve as the reporting officer. A physician, dentist, veterinarian, or chiropractor who knows that a designated or appointed person has already reported one of these diseases or health conditions does not have to submit a duplicate report.

(b) The chief administrative officer of a hospital shall appoint one reporting officer who shall be responsible for reporting each patient who is medically attended at the facility and who has or is suspected of having any reportable disease or health condition. Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(c) The medical director or other physician responsible for medical oversight of an human immunodeficiency virus (HIV) counseling and testing service or a community-based organization providing medical services shall appoint one reporting officer who shall be responsible for reporting each patient who meets the criteria of an HIV infection as defined in §97.1 of this title (relating to Definitions).

(d) Except as provided in subsection (b) of this section, any person who is in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease or health condition shall report as required by these sections.

(e) School authorities, including a superintendent, principal, teacher, school health official, or counselor of a public or private school and the administrator or health official of a public or private institution of higher learning should report as required by these sections those students attending school who are suspected of having a reportable disease. School authorities who are not also medical directors meeting the criteria in subsections (a), (b), or (c) of this section are hereby specifically exempt from reporting HIV infections.

(f) Any person having knowledge that a person is suspected of having a reportable disease or health condition should notify the local health authority or the department and provide all information known to them concerning the illness and physical condition of such person or persons.

#### §97.3. What to Report.

(a) Identification of reportable conditions.

(1) The Texas Department of Health's (department) publication titled "Identification and Confirmation of Reportable Diseases" shall be used to determine

when a reportable disease should be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies are indexed and filed in the Bureau of Disease Control and Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(2) Repetitive test results from the same patient do not need to be reported except for mycobacterial infections.

(b) Reportable conditions.

(1) Confirmed and suspected cases of the following diseases are reportable: acquired immune deficiency syndrome; amebiasis; anthrax; botulism- adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox; *Chlamydia trachomatis* infection; cholera; dengue; diphtheria; encephalitis (specify etiology); gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* infection, invasive; hepatitis, acute viral (specify type); HIV infection; legionellosis; listeriosis; Lyme disease; malaria; measles (rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; rabies in man; relapsing fever; Rocky Mountain spotted fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; streptococcal disease, invasive Group A; syphilis; tetanus; trichinosis; tuberculosis; tuberculosis infection in persons less than 15 years of age; typhus; vibrio infection; viral hemorrhagic fevers; and yellow fever.

(2) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(c) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(1) for chickenpox-numerical totals by age group;

(2) for initial or first time diagnosis of HIV infection (from physicians, counseling and testing services, and community-based organizations providing medical services)-date of birth, race or ethnicity (if Hispanic), sex, county of residence, date tested (date blood drawn), submitter's name (i.e. physician, counseling and testing program) and address;

(3) for all HIV infections as defined in §97.1 of this title (relating to Definitions) (from laboratories) -name of person

tested, date of birth, race or ethnicity (if Hispanic), sex, county of residence, date tested (date blood drawn), submitter's name (i.e., physician, counseling and testing program) and address;

(4) for *Chlamydia trachomatis* infection, chancroid, gonorrhea, and syphilis-shall be reported in accordance with §§97.132, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases); and

(5) for all other reportable diseases-by name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, and date of onset.

§97.4. When to Report.

(a) The following reportable diseases are public health emergencies and suspect cases shall be reported immediately to the local health authority or the regional director of the department: botulism, foodborne; cholera; diphtheria; *Haemophilus influenzae* infection, invasive; measles (rubeola); meningococcal infection, invasive; pertussis; poliomyelitis, acute paralytic; plague; rabies in man; viral hemorrhagic fevers; and yellow fever.

(b) The following reportable diseases shall be reported within one working day of identification as a suspected case: rubella (including congenital); and tuberculosis.

(c) *Chlamydia trachomatis* infection, chancroid, gonorrhea, and syphilis shall be reported in accordance with §§97.132, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases).

(d) For all other reportable diseases not listed in subsections (a)-(c) of this section, reports of disease shall be made no later than one week after a case or suspected case is identified.

§97.5. Where to Report.

(a) A physician, dentist, veterinarian, chiropractor, reporting officer of a hospital and a person in charge of a hospital laboratory (if the laboratory reports independently), or school authority shall report to the local health authority where the office, clinic, hospital, or school is located. If there is no local health authority appointed for the jurisdiction where the office, clinic, hospital, or school is located, the report shall be made to the regional director.

(b) The administrative officer of a clinical laboratory, blood bank, mobile unit, or other facility shall report as follows.

(1) If the laboratory examination was requested by a physician, notice shall be sent to the health authority for the jurisdiction where the physician's office is lo-

cated or to the regional director for the jurisdiction where the physician's office is located if no health authority has been appointed.

(2) If the laboratory examination was not requested by a physician, notice shall be sent to the health authority for the jurisdiction where the laboratory is located or to the regional director for the jurisdiction where the laboratory is located if no health authority has been appointed.

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors.

(a) The purpose of this section is to provide procedures for local health authorities to report a disease to the Texas Department of Health (department).

(b) Those reportable conditions identified as public health emergencies in §97.4(a) of this title (relating to When to Report) shall be reported immediately to the department by telephone.

(c) *Chlamydia trachomatis* infection, chancroid, gonorrhea, and syphilis shall be reported in accordance with §§97.132, 97.134, and 97.135 of this title (relating to Sexually Transmitted Diseases).

(d) The local health authority or regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department:

(1) for chickenpox-numerical totals by age group;

(2) initial or first time diagnosis of HIV infection (from physicians, counseling and testing services, and community-based organizations providing medical services)-date of birth, race or ethnicity (if Hispanic), sex, county of residence, date tested (date blood drawn), submitter's name (i.e., physician, counseling and testing service, community-based organization) and address;

(3) for all HIV infections as defined in §97.1 of this title (Definitions) (from laboratories)-name of person tested, date of birth, race or ethnicity (if Hispanic), sex, county of residence, date tested (date blood drawn), submitter's name (i.e. physician, counseling and testing program) and address; and

(4) for all other reportable diseases-by name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, and date of onset.

(e) Transmittal may be by telephone, mail, courier, or electronic transmission.

(1) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope

addressed to the attention of the appropriate receiving source and marked "Confidential."

(2) If by electronic transmission, including facsimile transmission by telephone, the local health authority or regional director must obtain prior approval of the manner and form of the transmission from the commissioner of health (commissioner) or his/her designee. Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal.

(f) The local health authority shall notify health authorities in other jurisdictions of a case or outbreak of a communicable disease that has been reported if the case resides in another jurisdiction or there is cause to believe transmission of a disease may have occurred in another jurisdiction. The department shall assist the local health authority in providing such notifications upon request. The local health authority of the area where the case or outbreak is diagnosed shall report the case or outbreak to the department on the same basis as other reports.

(g) The local health authority upon identification of a case or upon receipt of notification or report of disease shall take such action and measures as may be necessary to conform with the appropriate control measure standards. The local health authority may upon identification of a case or upon report of a communicable disease in a child attending a public or private child-care facility or a school notify the owner or operator of the child-care facility or the school administrator. The commissioner is authorized to amend, revise, or revoke any control measure or action taken by the local health authority if necessary or desirable in the administration of a regional or statewide public health program or policy.

(h) The local health authority is empowered to close any public or private child-care facility, school, or other place of public or private assembly when in his or her opinion such closing is necessary to protect the public health; and such school or other place of public or private assembly shall not reopen until permitted by the health authority who caused its closure.

#### *§97.7. Diseases Requiring Exclusion from Child-care Facilities and Schools.*

(a) The Texas Department of Health's (department) publication titled "Communicable Disease Chart for Schools and Child Care Facilities" includes the communicable diseases that require exclusion of children from child-care or school settings and the conditions for readmission. Copies are available upon request to the Materials Acquisition and Management Division,

Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Copies are indexed and filed in the Bureau of Disease Control and Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(b) The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the commissioner of health (commissioner) until one of the criteria listed in subsection (c) of this section is fulfilled.

(c) Any child excluded for reason of communicable disease may be readmitted, as determined by the local health authority, by submitting:

(1) a certificate of the attending physician attesting that the child does not currently have a communicable disease or to the disease's non-communicability in a child-care or school setting;

(2) a permit for readmission issued by a local health authority; or

(3) readmission criteria as established by the commissioner.

*§97.8. General Control Measures for Reportable Diseases.* Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the commissioner of health (commissioner), a local health authority, or a duly authorized representative of the commissioner or a local health authority may proceed as follows.

(1) Investigation shall be made, as the circumstances may require, for verifying the diagnosis, ascertaining the source of the causative agent, disclosing unreported cases, and finding contacts. On request, a person shall provide the department with records, data, and other information according to the written instruction of the Texas Department of Health (department). The local health authority and the department shall keep this information confidential.

(2) Laboratory specimens of the body tissues, fluids, or discharges and of materials directly or indirectly associated with the case, as may be necessary or desirable in confirmation of the diagnosis or for ascertaining the source of the infection, shall be collected and submitted to a laboratory for examination.

(3) Control techniques, including disinfection, environmental sanitation, immunization, chemoprophylaxis, isolation, preventive therapy, quarantine, education, prevention, and other accepted measures

shall be instituted as necessary to reduce morbidity and mortality. In establishing quarantine or isolation, the local health authority shall designate and define the limits of the areas in which the persons are quarantined or isolated. No person may be quarantined or isolated by a local health authority without his or her consent unless the person is subject to court orders under the Communicable Disease Prevention and Control Act, Article 8.

(4) Information concerning the disease and its prevention shall be given to the patient or a responsible member of the patient's household to prevent further spread of the disease.

(5) Control measures implemented by the local health authorities shall be consistent with and at least as stringent as those control measure standards imposed by the department. Individual control measures implemented by the local health authority are subject to review and modification or change by the commissioner.

*§97.9. Quarantine of Specific Premises.* A local health authority may declare a house, building, apartment, room, or place within the health authority's jurisdiction to be a place of quarantine whenever a case of communicable disease occurs therein, and, in the health authority's opinion, it is necessary to do so in order to protect the public health. No person shall leave or enter the place during the period of quarantine except with specific permission of the health authority.

#### *§97.10. Confidential Nature of Case Reporting and Records.*

(a) All individual morbidity case reports received by the local health authority or the Texas Department of Health (department) are confidential records and not public records.

(b) To implement disease control measures authorized in these sections, it may be necessary for the local health authority or the department to investigate public or private health records, including patient medical records pertinent to the reportable disease. On request, a person shall provide the department with records, data, and other information according to the written instruction of the department. The local health authority and the department shall keep this information confidential.

(c) The department may use information obtained from reports or health records for statistical and epidemiological studies which may be public information as long as an individual is not identifiable.

**§97.11. Notification of Emergency Medical Service Employee, Firefighter, or Peace Officer of Possible Exposure to a Disease.**

(a) The Communicable Disease Prevention and Control Act (Act), §81.048, requires a licensed hospital to notify a local health authority in certain instances when an emergency medical service employee, a peace officer, or a firefighter may have been exposed to a communicable disease during the course of duty from a person delivered to the hospital under conditions that were favorable for transmission. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) chickenpox, diphtheria, meningococcal infections, mumps, pertussis, rabies, rubella, tuberculosis, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(2) acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, plague, syphilis, viral hepatitis, viral hemorrhagic fevers, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids;

(3) amebiasis, campylobacteriosis, cholera, hepatitis (viral Type A), salmonellosis, including typhoid fever, shigellosis, and vibrio infections, if fecal material is ingested; and

(4) measles, pneumonic plague, and viral hemorrhagic fevers if the worker and patient are in the same room, vehicle, ambulance, or other enclosed space.

(b) A hospital shall report to the local health authority the name of the transport person exposed, the date of exposure, the type of exposure, and the disease or condition to which exposure may have occurred.

**§97.12. Death of a Person with Certain Communicable Diseases.**

(a) If a physician has knowledge that a person had, at the time of death, a communicable disease listed in subsection (c) of this section, then the physician shall affix or cause to be affixed a tag on the body, preferably on a great toe.

(b) The tag shall be on card stock paper and shall be no smaller than five centimeters by 10 centimeters. The tag shall include the words "COMMUNICABLE DISEASE -- BLOOD/BODY FLUID PRECAUTIONS REQUIRED" in letters no

smaller than six millimeters in height. The name of the deceased person shall be written on the tag. The tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(c) Diseases that shall require tagging are acquired immune deficiency syndrome; anthrax; brucellosis; Creutzfeldt-Jacob disease; hepatitis, acute viral (specify type); HIV infection; plague; Q fever; rabies; relapsing fever; Rocky Mountain spotted fever; syphilis; tuberculosis; tularemia; and viral hemorrhagic fevers.

(d) All persons should routinely practice the following procedure when performing post-mortem care on a deceased person who is known or suspected of having a communicable disease listed in subsection (c) of this section.

(1) A person should wear a gown, gloves, a mask, and eye-coverings when performing procedures involving extensive contact with blood or body fluids. Skin should be washed immediately if the skin is or may be contaminated with blood or body fluids.

(2) Needles should not be recapped, purposefully bent, broken, or removed from disposable syringes. Needles and other sharp items should be disposed of in puncture-resistant containers. Contaminated articles that may be disposed of by bagging should be bagged in plastic bags not less than 1.5 mil thick each. Other articles may be disposed of by incineration or disinfected by chemical disinfection or steam sterilization.

(3) Spills of blood and other body fluids should be cleaned promptly with a solution of household chlorine bleach diluted 1:10 with water or an approved disinfectant that is tuberculocidal at recommended dilutions.

**§97.13. Exposure of Health-Care Personnel to Acquired Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV) Infection.**

(a) Health-care personnel are at risk of exposure to HIV or AIDS during a medical procedure if the personnel have their mucous membranes or skin in contact with any body fluid or tissue (other than the patient's intact skin) and if the procedure to be performed is an invasive procedure that involves surgical entry into tissues, cavities, or organs or the repair of major traumatic injuries, including angiographic, bronchoscopic, endoscopic, and obstetrical procedures.

(b) Emphasis must be placed on preventing the transmission of HIV or AIDS and not on testing for its presence. Health-care personnel shall follow the guidance given in the publications titled:

(1) "Recommendations for Prevention of HIV Transmission in Health-Care Settings," *Morbidity and Mortality Weekly Report* (MMWR), August 21, 1987, Volume 36, Number 2S; and

(2) "Update: Universal Precautions for Prevention of Transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and Other Bloodborne Pathogens in Health-Care Settings," MMWR, June 24, 1988, Volume 37, Number 24, U.S. Public Health Service, Centers for Disease Control, which publication is adopted by reference.

(c) Copies of the publications listed in subsection (b) of this section are filed in the Bureau of HIV and STD Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public review during working hours.

**§97.14. Guidelines for Testing Certain Indicted Persons for Certain Diseases.**

(a) A court may order a person who is indicted for sexual assault or aggravated sexual assault to submit to a medical procedure or test for presence of sexually transmitted diseases or acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, or other agent of AIDS, under authority of the Code of Criminal Procedure, Article 21.31. The physician who is directed by the court to perform the medical procedure or test shall follow the rules in this section that prescribe the criteria for testing and that respect the rights of the victim of the alleged offense and the rights of the person accused.

(b) In order to protect the privacy of the person being tested, the court, in consultation with the local health authority, shall use or arrange the use of a pseudonym for the person on all requests and reports pertaining to the procedure or test. The pseudonym shall be distinct and known only to the physician, the local health authority, the person being tested, and the court. The person performing the procedure or test shall make the results available directly to the local health authority.

(c) For AIDS, gonorrhea, HIV infection, genital infections from *Chlamydia trachomatis*, syphilis, and hepatitis (acute or chronic viral Type B), the procedures and tests shall be those specified in the Texas Department of Health's (department) publication titled "Identification and Confirmation of Reportable Diseases" (pertaining to the reporting of diseases and health conditions). For other sexually transmitted diseases, the physician shall request instructions from the commissioner of health (commissioner) or his designee.

(d) The local health authority shall meet with the victim of the alleged offense and disclose the results of the medical procedures or test; no other person shall be present during the notification unless permitted by the victim. The local health authority shall advise the victim of the medical implications of the test results whether or not the test results are positive or negative. The local health authority shall instruct the victim to receive further medical intervention by the victim's personal physician. If the victim resides outside the State of Texas, the notification may be made by telephone.

(e) The local health authority shall notify the person accused of the results of the procedure or test and, if the result indicates the presence of a communicable disease, shall instruct the person accused as required by the Communicable Disease Prevention and Control Act, §81.083 and shall perform the appropriate duties and make the reports, as required by §97.3 of this title (relating to What to Report).

(f) After reporting of the results of the procedure or test to the victim and to the person accused, the local health authority shall file an affidavit with the court attesting that he or she has executed the order. Disclosure of the test results to any persons other than the victim and the accused person is prohibited under the Code of Criminal Procedure, Article 21.31.

(g) A local health authority may delegate any duty imposed by these sections to a person who is under the local health authority's supervision. If a victim or a person tested under this section resides outside the jurisdiction of the local health authority, the notifications required by this section may be made by the local health authority in the jurisdiction where the person resides.

*§97.15. Fee for Providing Written Notice of a Positive Human Immunodeficiency Virus (HIV)-Related Test Result to an Applicant for Insurance.*

(a) An applicant for insurance must be given written notice of a positive HIV-related test result by a physician designated by the applicant, or in the absence of that designation, by the Texas Department of Health (department).

(b) The insurer shall pay the department a fee of \$25 to cover the cost of the department providing the written notice to the applicant for insurance.

*§97.17. Counseling and Testing for State Employees Exposed to Human Immunodeficiency Virus (HIV) Infection on the Job.*

(a) Purpose. The purpose of this section is to implement the provisions of the Act, §85.116.

(b) Counseling and testing.

(1) The counseling and testing must be performed in accordance with the "Guidelines for the Administration of HIV Antibody Testing Programs." Copies of the guidelines are available for review in the HIV Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Copies also are available on request.

(2) A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested.

(3) HIV counseling and testing will be performed on a state employee at the expense of the state agency if:

(A) the employee documents to the agency's satisfaction that he or she may have been exposed to HIV while performing duties of employment of the agency; and

(B) the exposure was a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids known to transmit HIV.

(c) Worker's compensation. To qualify for workers' compensation or similar benefits or compensation, the employee must provide the state agency with a written statement of the date and circumstances of the exposure and document that, within 10 days after the date of the exposure, the employee had a test result that indicated the absence of HIV infection. Further information can be obtained from "Risk Management for Texas State Agencies, Volume III, Workers' Compensation Exposures," which is available from the Risk Management Division, Texas Workers' Compensation Division, 4000 South IH-35, Southfield Building, Austin, Texas 78704.

*§97.18. Fee to Cover the Cost of Providing the Human Immunodeficiency Virus (HIV) Counseling and Testing Course.*

(a) Purpose. The purpose of this section is to implement the provisions of the Communicable Disease Prevention and Control Act, §§85.081-85.089, which requires that the Texas Department of Health (department) develop and offer a training course for persons providing HIV counseling, and charge a reasonable fee for the course.

(b) Content.

(1) The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(2) The course titled "HIV Serologic Test Counseling and Partner Notification Techniques" is three full days and shall provide participants with a notebook of guides and reference material.

(c) Fee.

(1) The fee will be \$150 for each participant whose affiliation is with a counseling and testing entity that does not contract with the department.

(2) Fees shall be made payable to the Texas Department of Health. All fees are nonrefundable and must be received by department prior to participation in the course. Accepted form of payment shall include cashiers check or money order. No other form of payment will be accepted.

(d) Notice. Notice of the training courses will be announced through correspondence to contractors and other appropriate entities from our regional coordinators (HIV trainers). The training course schedule and the contact person will also be published quarterly in the *Texas Register*.

*§97.22. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including Human Immunodeficiency Virus (HIV) Infection.*

(a) Purpose. The Communicable Disease Prevention and Control Act (Act), Health and Safety Code, §81.050, provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, a correctional officer, or a law enforcement officer, who receives a bona fide exposure to a reportable disease, including HIV infection, in the course of employment or volunteer service may request the Texas Department of Health (department) or the department's designee to order testing of the person who may have exposed the worker. This section establishes guidelines to designate the criteria that constitute exposure to a reportable disease, including HIV infection. The guidelines also prescribe minimum training requirements of the department's designee who will judge if the request meets criteria establishing risk of infection with a reportable disease, including HIV infection.

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

(1) Emergency responder—An



emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer who is employed by or volunteers for an employer with the responsibility of answering emergency calls for assistance.

(2) Requestor-Emergency responder who presents a sworn affidavit to a local health authority to request testing of a person who may have exposed him/her to an infectious disease in the course of his/her duties.

(3) Designated health official-For the purposes of implementing the Health and Safety Code, §81.050(d) and (e), the following physicians have been delegated by the Department of Health to be the designated health officials who determine if a risk of exposure to a reportable disease has occurred:

(A) the health authority for the jurisdiction in which the emergency responder is employed;

(B) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of communicable diseases in the municipality or county served by the health department;

(C) if the health authority does not choose to make determinations of the risks of exposure and there is not a separate physician employed by the county or municipal health department with responsibility for the control of communicable diseases, or for counties which do not have an appointed health authority, the regional director of the Texas Department of Health (department) region of which the county or municipality is a part; and

(D) for the Texas Department of Criminal Justice (TDCJ), the TDCJ deputy director of health services (Institutional Division) who must serve as the designated health official in determining risk of exposure to correctional officers employed by TDCJ.

(4) Source-The person who may have exposed an emergency responder to a reportable, communicable disease during the emergency responder's course of duties.

(c) Diseases and designated conditions that constitute exposure to reportable diseases. For the purposes of the Act, §81.050, the diseases and designated conditions constitute exposure to a reportable disease, including HIV infection, are as follows:

- (1) chickenpox; diphtheria;

*Haemophilus influenzae* infections, invasive; meningitis (specify type); meningococcal infections, invasive; mumps; pertussis; polio; psittacosis; rabies; rubella; and tuberculosis if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(2) anthrax; acquired immune deficiency syndrome; brucellosis; dengue; hepatitis (viral, Types A, B, D, non-A/non-B); HIV infection; malaria; plague; syphilis; typhus; viral hemorrhagic fevers; and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; or either a splatter or aerosol into the eye, nose, or mouth or any significant contamination of an open wound or non-intact skin with blood or body fluids;

(3) amebiasis; campylobacteriosis; cholera; hepatitis (viral, Type A); salmonellosis, including typhoid fever; shigellosis; and vibrio infections, if fecal material is ingested; and

(4) measles (Rubeola); pneumonic plague; and viral hemorrhagic fevers if the worker and the patient are in the same room, vehicle, ambulance, or other enclosed space.

(d) Department designee. For the purposes of the Act, §81.050, the following guidelines prescribe requirements of the department's designee who will judge if the request for testing meets criteria establishing risk of infection with a reportable disease, including HIV infection.

(1) The health authority for the jurisdiction in which the emergency medical services employee, paramedic, fire fighter, correctional officer, or law enforcement officer, who is employed or volunteers shall review the request, presented as a sworn affidavit, and determine whether the request meets the criteria set out in subsection (c) of this section.

(2) If an exposure is judged to have occurred, the health authority will then determine whether that exposure constitutes a reasonable risk of infection to the requester. However, if the correctional officer is employed by the Texas Department of Criminal Justice (TDCJ) (Institutional Division), the deputy director for health services of that agency shall judge if the request for testing meets the criteria for risk of infection. In determining risk of infection, the health authority or the TDCJ deputy director for health services shall follow guidance given in the current edition of "Control of Communicable Diseases in Man," published as an official report by the American Public Health Association.

(e) Procedures for mandatory testing. Steps necessary to mandate testing for

a reportable communicable disease.

(1) Submitting a request for testing of a source. If an employed or volunteer emergency responder believes he or she may have been exposed to a reportable disease while discharging his or her duties, then he or she, within 72 hours, must have postmarked or submitted in person a sworn affidavit to his or her designated health official requesting that the source be tested for the reportable communicable disease(s) which is (are) of concern. The sworn, written affidavit of the requestor must contain:

(A) name;

(B) home address;

(C) telephone number at work;

(D) telephone number at home;

(E) the name and address of the emergency agency where he or she works or volunteers;

(F) an emergency telephone number;

(G) date and time of exposure;

(H) the circumstances of the exposure;

(I) the source's symptoms, if known (e.g., rash, fever, chills, jaundice, productive cough, diarrhea, nausea/vomiting, neurologic signs, coryza, hemorrhage, other);

(J) transport designation of the source; and

(K) if known, the source's name, address, preliminary diagnosis, and probable present location.

(2) Responsibilities of the requestor. If the requestor believes he or she may have been exposed to a reportable disease and that, if infection occurs, he/she may file for worker's compensation, then the requestor must obtain an appropriate medical test which demonstrates susceptibility to the infection of concern. This test must be obtained within 10 days of the alleged exposure. The requestor should also be aware that he or she may be liable for any court costs if the source person refuses to be tested for infection with a reportable

disease and the requestor takes the matter to court and loses.

(3) Determination of exposure. The designated health official must decide within three working days of receipt of the sworn affidavit if an exposure likely to lead to an infection has occurred. The designated health official must also consult the most recent edition of "Control of Communicable Diseases in Man," published by the American Public Health Association, and should also consult any other reference which may provide additional relevant information.

(4) Relating the determination of exposure.

(A) Ruling of a non-exposure. If the designated health official determines that an exposure likely to lead to an infection with a reportable disease did not occur, then he or she must so inform the requestor by letter. The letter must contain a brief explanation of the basis of the decision. The designated health official may also notify the requestor by telephone, but this does not preclude the need for a written response.

(B) Ruling of an exposure.

(i) If the designated health official determines that the conditions of exposure were such that there was a reasonable chance that infection may have occurred, then he or she must notify the requestor by registered/certified mail and request that the requestor consult the designated health official. If the situation is such that control or treatment measures are immediately advisable, then the designated health official must also make a reasonable effort to notify the requestor of what actions need to be taken.

(ii) During the consultation with the designated health official, the requestor must receive the following information both verbally and in writing:

(I) the disease(s) which may have been transmitted during the exposure;

(II) the tests that are available to detect infection;

(III) where and when to obtain testing;

(IV) the prophylactic measures which are appropriate; and

(V) signs and symptoms of infection.

(iii) If the requestor may

have been exposed to HIV virus, then approved pretest counseling must be provided. The designated health official must state that he or she will proceed to locate the source and request the source to undergo testing. The designated health official must also state that if the source refuses to be tested, then the designated health official will consult with the requestor to determine if he or she wishes to pursue the matter into court. The designated health official must warn the requestor that if the matter is taken to court and the court rules that testing of the source is not required, then the requestor may be liable for court costs.

(5) Disagreement with designated health official's ruling. If the requestor does not agree with the determination of the designated health official, and wants to pursue the matter further, then the requestor must submit a copy of his or her original sworn affidavit to the commissioner of health (commissioner) for an independent assessment. The petition must be within seven days of the written notification by the designated health official. The decision of the commissioner is final. If the commissioner decides that the conditions of the exposure were such that there existed a reasonable chance of exposure to a reportable disease, then the designated health official in whose jurisdiction the exposure occurred must continue action to obtain testing of the source.

(6) Notification of the source.

(A) Once the designated health official determines that an exposure with risk of transmission of a reportable disease has occurred, the designated health official must within three working days attempt to locate and notify the source or the source's legal guardian. Notification must be by hand-delivered letter which will ask the source or the source's legal guardian to contact the designated health official but will not relate the reasons for the request. The designated health official must personally converse with the source or the source's legal guardian regarding the potential transmission of a reportable disease to an emergency responder.

(B) If the source is hospitalized, incarcerated, or otherwise unable to personally consult with the designated health official, then a health professional trained in relating health information (e.g., registered or licensed vocational nurse, disease intervention specialist, epidemiologist) must relate verbally and in writing the request for information regarding the source's current status related to certain reportable diseases.

(C) At least three attempts must be made to deliver the notice to the source or source's legal guardian. If after three attempts, the notice has not been delivered then the designated health official will mail the notice by registered mail to the last known address of the source or source's legal guardian.

(7) Information provided to source.

(A) Once contacted, the designated health official must relate to the source or source's legal guardian (both verbally and in writing in a language the source can understand) that:

(i) an emergency responder has had contact with the source in a manner that transmission of disease may have occurred;

(ii) this person is now requesting information on the possible contagiousness of the source with a disease(s) reportable by law;

(iii) the source or source's legal guardian is asked to present laboratory or other medically valid evidence that he or she did or did not have the disease(s) at the time of exposure; and

(iv) the source or source's legal guardian is required to present this information or evidence that an appropriate specimen has been submitted for testing within 14 days of receipt of a written request for testing.

(I) The request must describe the type of test required (e.g., blood for antigen or antibody, culture) and where such a test and appropriate counseling can be obtained.

(II) The request must also state that if the source or source's legal guardian chooses not to use public health facilities for testing, then he or she is liable for any costs incurred from testing.

(B) The test results or proof that the test specimen had been taken must be in the form of a signed and dated statement from a physician or laboratory stating the specimen has been collected and the approximate date that the laboratory or other results would be ready. The proof of specimen collection must be returned to the designated health official within 17 days after receipt of the written request for testing from the designated health official. If the source or source's legal guardian already has proof of laboratory results which demonstrate that the source was or could not have been infectious at the time of the exposure to the source, then the previous results substitute for new testing.

(C) A source or the source's legal guardian who states that the source has been tested in the past and was positive for HIV or chronic hepatitis B but is unable to produce valid written results (anonymous test sites, special screens, lost records) must be asked to be retested. If they refuse, then this information must be relayed to the requestor.

(8) Source objection to determination of exposure. If the source or the source's legal guardian objects to the designated health official's decision that he or she was involved in potentially exposing an emergency responder to a reportable disease, then he or she must present a copy of his or her original sworn affidavit to the commissioner for an independent assessment. The decision of the commissioner is final.

(9) Test results. The source or the source's legal guardian has the responsibility of presenting the test result(s) to the health authority within five days of receipt. The results must show that the tested specimen was collected from the source, the date of collection, the type of test which was conducted, and the results of the test. The results must have the original signature of the physician who ordered, performed, or was responsible for the testing.

(10) Notification of the requestor. When the test results from the source are obtained, the designated health official must arrange for an interview with the requestor. During the interview the designated health official must provide verbally and in writing the results of any testing on the source. If warranted by the test results, the designated health official must also provide recommendations for medical follow-up.

(11) Refusal to be tested. If the source refuses to be tested, a statement to that effect must be signed by the source or the source's legal guardian. If the source or the source's legal guardian refuses to sign a statement or does not comply with the written request to be tested within the allotted 14-day time interval after notification, then the designated health official will ask for a written statement from the requestor stating that the matter should or should not be referred to the district court. The written request must state that the requestor understands he or she may be liable for court costs if the court does not rule in favor of mandated testing of the source. The designated health official will then refer the request to the prosecuting attorney who represents the state in district court. The prosecuting attorney will request a hearing on the order.

(12) Court proceedings. The source has the right to an attorney at the hearing and the court will appoint an attorney

for a person who cannot afford legal representation. The source or source's legal guardian cannot waive the right to an attorney unless he or she has consulted with an attorney. The court will then review the order and determine whether exposure occurred and represents a probable risk of infection. Evidence may be introduced by the attorney for the state or the attorney for the source. The court will then order testing and appropriate counseling or refuse to issue the order. If the court does not find reasonable cause to have the person tested, then the court may charge court costs to the requestor.

(13) Results of court ordered tests. If a test is ordered, the designated health official must make arrangements for appropriate counseling, specimen collection, testing, and maintenance of confidentiality of the source. The designated health official has the responsibility of notifying both the requestor and the source or source's legal guardian of the results of the testing and of any follow-up treatment and/or counseling. The designated health official must develop a protocol to code test specimens to ensure that identifying information concerning the source is destroyed as soon as testing is complete.

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 April 28, 1992.

TRD-9205864

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 27, 1992

For further information, please call: (512) 458-7455

## Sexually Transmitted Diseases

• 25 TAC §§97.131, 97.132, 97.134, 97.135

The amendments are proposed under the Health and Safety Code, Chapter 81, which provides the Board of Health with the authority to adopt rules concerning the reporting of communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

**§97.131. Definitions.** The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Reportable sexually transmitted disease—**Chancroid**, *Chlamydia trachomatis*, gonorrhea, or syphilis.

Sexually transmitted disease—An infection,

with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations, of whatever kind between two persons, and that produces or might produce a disease in or otherwise impair the health of either person or might cause an infection or disease in a fetus in utero or a newborn. For purposes of these sections, syphilis, gonorrhea, chancroid, granuloma inguinale, condyloma acuminata (**human papilloma virus**), genital herpes simplex infection, and genital and neonatal chlamydial infections, including lymphogranuloma venereum, are sexually transmitted diseases.

### §97.132. Reporting of Sexually Transmitted Disease.

(a) A physician who diagnoses or treats a case of **chancroid**, *Chlamydia trachomatis*, gonorrhea, or syphilis, [syphilis, gonorrhea, or *Chlamydia trachomatis*] and every administrator of a hospital, dispensary, or charitable or penal institution in which there is a case of **chancroid**, *Chlamydia trachomatis*, gonorrhea, or syphilis, [syphilis, gonorrhea, or *Chlamydia trachomatis*] shall report the case within 72 hours to the director of a local health department or, if there is none, to the director of the public health region in which the case is diagnosed or treated.

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

(d) To report **chancroid** and/or syphilis, the report shall contain the name, address, including the city and county of residence, age or date of birth, sex, race, ethnic group, diagnosis of the case, including pertinent laboratory test results, and antibiotics used; and the name, office address, and office telephone of the reporting physician or other individual rendering the report.

(e) A physician or others reporting a case of gonorrhea or a laboratory-confirmed case of *Chlamydia trachomatis* [*Chlamydia*] shall complete a report Form STD-27 with only the city, age, sex, race, disease, and the name, office address, and office telephone of the reporting physician or other person filing the report, provided all of the following conditions are met:

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

(f) (No change.)

### §97.134. Certification of Laboratories Performing Standard Serologic Tests.

(a) A laboratory performing a standard serologic test for syphilis shall file an application for certification by the Texas Department of Health (department) on Form G-62 Syphilis Serology Approval Program Registration. This application may

be obtained without charge from the Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Completion of an application form is required only for initial certification providing that the laboratory remains certified. If a laboratory has been decertified or has withdrawn from certification, reapplication is necessary in each instance. Any laboratory certified by the department as of August 29, 1983, under authority of the Communicable Disease Prevention and Control Act, §81.090 [Texas Civil Statutes, Article 4445a], shall be considered to have filed an application and been certified under this subsection [rule].

(b)-(k) (No change.)

*§97.135. Reporting of Laboratory Tests for Sexually Transmitted Diseases.*

(a) Any person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of chancroid, *Chlamydia trachomatis*, gonorrhea, or syphilis, [syphilis, gonorrhea, or *Chlamydia*] shall notify the Texas Department of Health (department) of its findings.

(b) (No change.)

(c) Notifications shall be submitted at least weekly if any of the tests for chancroid, *Chlamydia trachomatis*, gonorrhea, or syphilis [syphilis, gonorrhea, or *Chlamydia*] are reactive or positive. If a darkfield microscopic examination for syphilis (*Treponema pallidum*) is positive, the findings shall be reported within 24 hours of completion of the examination. If during any calendar quarter, reportable tests are performed and all test results are negative, the person in charge of the laboratory shall submit a statement to this effect in the same manner as the notification on or before January 5, April 5, July 5, and October 5 following that calendar quarter.

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

(f) A laboratory report of the results of tests performed for chancroid, *Chlamydia trachomatis*, gonorrhea, or syphilis, [gonorrhea, syphilis, or *Chlamydia*] shall not constitute a diagnosis of either disease and shall not satisfy the requirements for reporting sexually transmitted disease by a physician attending the person from whom the laboratory specimen was obtained.

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 April 28, 1992.

TRD-9205865

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Proposed date of adoption: June 27, 1992

For further information, please call: (512) 458-7455

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**Part II. Texas Department  
of Mental Health and  
Mental Retardation**

**Chapter 401. System  
Administration**

**Subchapter G. Community  
Mental Health and Mental  
Retardation Centers**

• **25 TAC §§401.451-401.461**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§401.451-401.461, concerning the Community Mental Health and Mental Retardation Centers. New sections containing pertinent provisions of the sections proposed for repeal are contemporaneously proposed in this issue of the Texas Register.

Leilani Rose, director, Office of Budget and Fiscal Service, has determined that there will be no significant fiscal implications for state or local government.

Dennis Jones, commissioner, has determined that the public benefit is the repeal of sections which are inconsistent with state law and which no longer reflect department criteria and process in regards to community mental health and mental retardation centers. There is no anticipated cost to small businesses as a result of repealing sections as proposed. There is no anticipated local economic impact. There is no anticipated cost to persons required to comply with the sections as proposed.

Comments on the proposed repeal may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeals are proposed under the Health and Safety Code, Title 7, §532. 015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

*§401.451. Purpose.*

*§401.452. Application.*

*§401.453. Definitions.*

*§401.454. Appointment of Boards of Trustees.*

*§401.455. Approval of Plan.*

*§401.456. Awarding of Funds.*

*§401.457. Standards of Administration for Boards of Trustees.*

*§401.458. Civil Rights.*

*§401.459. Fiscal Auditing Procedures.*

*§401.460. References.*

*§401.461. Distribution.*

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 April 29, 1992.

TRD-9205910

Ann K. Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Proposed date of adoption: June 5, 1992

For further information, please call:(512) 465-4670

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• **25 TAC §§401.451-401.464**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§401.451-401.464, concerning Community Mental Health and Mental Retardation Centers. The new sections would replace Chapter 401, Subchapter G of this title, relating to Community Mental Health and Mental Retardation Centers, which is contemporaneously proposed for repeal in this issue of the Texas Register.

The proposed new sections implement recommendations of two broad-based workgroups, one of which included representatives of community mental health and mental retardation centers, facility community-based services, and Central Office staff, and the other which included representatives of the Texas Board of MHMR, community mental health and mental retardation centers, and consumer groups. Those recommendations included suggested criteria and process for forming new community centers and expanding existing centers; a statement of basic principles regarding the state and local partnership for the delivery of services to persons with mental illness or mental retardation as reflected in the community center system; and a statement that the department shall provide support to the board of trustees and to the planning process. The Texas Board of MHMR is required to provide a certificate to each community center recognizing its status as a community center and the local MHMR authority.

The proposed new sections also implement some of the provisions mandated in Senate

Bill 112, 72nd Texas Legislature, regular session. These include revisions to the process for reviewing and/or approving real property purchases by community centers, and requirements regarding the appointment of boards of trustees.

The proposed new sections include the pertinent provisions from the subchapter being repealed relating to appointment of boards of trustees, approval of plan, standards of administration for boards of trustees, civil rights, and fiscal auditing procedures.

Leilani Rose, director, Financial Services Department, has determined that there will be no additional fiscal cost to state or local government as a result of administering the new sections as proposed. There will be no significant local economic impact.

Dennis Jones, commissioner, has determined that the public benefit is the promulgation of rules consistent with state law and the definition of the criteria and process for the development of new community centers and the expansion of existing centers. There will be no effect on small businesses. There is no anticipated cost to persons required to comply with the new sections as proposed.

Comments on the proposed new sections may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§401.451. Purpose.** The purpose of this subchapter is to describe requirements by which community mental health and mental retardation centers shall be constituted and receive state or federal funds from or through the Texas Department of Mental Health and Mental Retardation and to describe certain relationships with the department.

**§401.452. Application.** This subchapter applies to all community mental health and mental retardation centers established under the Health and Safety Code, Title 7, Chapter 534 (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203).

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

**Board**—The Texas Board of Mental Health and Mental Retardation.

**Board of trustees**—A body of not less than five nor more than nine persons selected and appointed in accordance with Health and Safety Code, Title 7, §534.002 or §534.003 which has responsibility for the

effective administration of mental health and/or mental retardation services provided by a community center under its jurisdiction.

**Commissioner**—The commissioner of the Texas Department of Mental Health and Mental Retardation. The commissioner is the state mental health authority and the state mental retardation authority for Texas.

**Community center**—A center established under Health and Safety Code, Title 7, Chapter 534 (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203).

**Contract period**—The beginning date through the ending date of a contract, usually from September 1 of each year through August 31 of the following year.

**Core services**—Services to be provided for each local service area as stipulated in Health and Safety Code, Title 7, §534.053 (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203, §4.03) including:

(A) 24-hour emergency screening and rapid crisis stabilization services;

(B) community-based crisis residential service or hospitalization;

(C) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;

(D) family support services, including respite care;

(E) case management services;

(F) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(G) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

**Department**—The Texas Department of Mental Health and Mental Retardation.

**Local agency**—A city, county, hospital district, school district, or any organizational combination of two or more of these which may establish and operate a community center.

**Local match**—Required local financial participation/contributions which represent on a contract-specific basis the amount of local funding the local MHMR authority

commits to complement department funding for the contracted services, expressed in the contract as a dollar amount or as a funding percentage of the state general revenue contract for services funds, to include city government tax funds; county government tax funds; other tax funds, which are funds from other local taxing authorities such as a school district, a hospital district, etc.; patient fees—insurance—reimbursements, including reimbursements for patient services, drugs, and tuition from patient's resources and/or patient's personal insurance policies and sources such as a local school district, Champus, Veterans Administration, COG and other allowable city or county patient fee reimbursements; and miscellaneous income and contributions, transfers from reserve funds of local revenues, interest and rental income donations, contributions and other non-taxing authority income or earnings; and in-kind goods and services.

**Local MHMR authority**—A component of the service delivery system designated by the department to direct, operate, facilitate, or coordinate the delivery of mental health and/or mental retardation services to the priority population for a local service area.

**Local service area**—A geographic area composed of one or more Texas counties delimiting the population which may receive services from a community center in its function as a local mental MHMR authority.

**Mental health services**—All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons with a severe and persistent mental illness or a dual diagnosis of mental illness and chemical dependency.

**Mental retardation services**—All services concerned with research, prevention, and the detection of mental retardation and all services related to the education, training, habilitation, care, treatment, and supervision of persons with mental retardation, except the education of school-age individuals that the public educational system is authorized to provide.

**Priority population**—Those groups of persons with mental illness or mental retardation identified in the department's current strategic plan.

**Subcontractor**—A local agency, qualified person, or organization with which the board of trustees contracts to deliver a portion of the services funded by or through the department.

**§401.454. Support of Partnership with Community Centers.**

(a) The department is committed to the provision of accessible and appropriate services in the community to persons in the priority population. Furthermore, the de-

partment recognizes the importance of local control vested in the local MHMR authority. Therefore, the department supports and encourages the creation of community centers and the delegation to those local units of government the role and authority as the local MHMR authority. The following principles are important in the development of local services.

(1) Persons receiving services, as well as their families and friends, should have a prominent role in determining which services best meet their needs, in order to improve the effectiveness of the service delivery system.

(2) Inclusion in the local community is necessary to the provision of quality services.

(3) Decisions by local boards of trustees made openly with consideration of the view of those affected by the decisions, are necessary to the design of an effective service delivery system.

(4) Empowerment of local communities, persons receiving services, and community centers to meet a changing array of service delivery needs, will result in local commitment to delivery of optimum services.

(5) The availability and quality of service should be the same, regardless of where a person resides.

(b) The provisions of this subchapter are intended to promote an interdependent partnership of state and local government in the form of local boards of trustees which recognizes the importance of local initiatives and control in the development and expansion of community services.

(c) The advantage of forming a new community center or affiliating with an existing community center is the greater degree of local ownership and control of the services provided. The department's intent is to encourage and promote the development of new community centers in areas currently served by facility community-based programs.

(d) A community center must be established pursuant to Health and Safety Code, Title 7, Chapter 534, Subchapter A (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203)

*§401.455. Process to Establish a Community Center.*

(a) To establish a community center, a letter of intent must be submitted by the local agency to the commissioner.

(b) If the local agency submitting the letter of intent is not the county or counties, the letter must be accompanied by

a letter of endorsement from the appropriate county judge or judges.

(c) The commissioner shall designate staff in Central Office who are knowledgeable of community center operations to review the viability of the letter of intent using the following criteria:

(1) the population of the service area of a new community center shall be greater than 100,000;

(2) the requirement for local match shall be met; and

(3) the intent of the community center shall be to serve both persons with mental illness as well as persons with mental retardation, even though the center may initially not be able to do so.

(d) The commissioner's response to the local agency's letter of intent shall be based on the review described in subsection (c) of this section and shall be sent to the local agency by certified mail, return receipt requested.

(e) If the commissioner supports the letter of intent, the local agency will appoint a local board of trustees and develop a plan for the community center and submit the plan to the commissioner for approval.

(f) If the commissioner approves the plan the department may designate the community center as the local MHMR authority and may contract for services from the community center.

*§401.456. Modifying a Community Center's Plan to Serve Adjoining Geographic Areas.* When a local agency wants to affiliate with an existing community center, the board of trustees of the existing center will modify the center's plan to reflect the expansion of services into the region. The modified plan shall be submitted to the commissioner for approval.

*§401.457. Appointment of Boards of Trustees.* The local agency that receives approval based on the letter of intent described in §401.455 of this title (relating to Process to Establish a Community Center) to establish a community center must prescribe criteria and procedures for the appointment of members of boards of trustees as described in Health and Safety Code, Title 7, Chapter 534. Each local agency shall prescribe and make available for public review the following:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees, including tenure, consumer representation, geographic and ethnic representation

as addressed in the Health and Safety Code, Title 7, Chapter 534, Subchapter A;

(3) the procedure for posting and filling a vacancy on the board of trustees; and

(4) the procedure and grounds for removing a member of the board of trustees.

*§401.458. Approval of Plan.*

(a) Boards of trustees established after the effective date of this subchapter shall submit to the commissioner a written plan to provide effective mental health and/or mental retardation services to the residents of the local service area. The written plan shall include:

(1) a comprehensive service plan, which describes:

(A) the vision, mission, and the short and long-range goals of the community center, consistent with the department's vision, mission, and goals;

(B) the financial, physical, and personnel resources of the area to be served, including comparable or companion services available from other sources;

(C) a systematically derived estimate of the total community need in the areas of mental health, substance abuse, and mental retardation services;

(D) the population to be served, based on demographics of the local service area and priority population statistics;

(E) how core and other services are to be provided, including subcontracts with private providers;

(F) the effect of these services on other components of the service delivery system, including state hospitals, state schools, state centers, and other community centers;

(G) the projected cost of delivering specified services;

(H) transfer of funds from facility community programs;

(I) the extent of involvement of subcontractors in the planning process and in the delivery of services; and

(J) the involvement of local advocacy organizations, persons to be served, and their families in planning and delivering services;

(2) an organizational plan, including:

(A) organizational structure of the board of trustees and the community center;

(B) board of trustees membership;

(C) a copy of the charter; and

(D) a copy of the contract entered into by the organizing bodies as required by Health and Safety Code, Title 7, Chapter 534 (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-203);

(3) a financial plan, including a proposed performance contract with attachments and budget on forms to be supplied by the department; and

(4) the board of trustee's assurance that it understands and will enforce compliance with applicable state and federal laws, rules, regulations, settlement orders, and related mandates.

(b) The department shall provide support to the board of trustees and the planning process. This support may include technical assistance, coordination with other community centers to provide assistance, negotiating transfer of funds from the state facility budgets, if applicable, and other assistance as deemed appropriate. The commissioner shall ensure necessary review of the plan including a site visit by department personnel. Any amendments to the plan must be submitted to the commissioner for final written approval.

(c) A community center may receive department funds only if the Texas Board of MHMR approves the plan required in subsection (a) of this section, and determines that the center can appropriately, effectively, and efficiently provide services in the local service area.

(d) The Texas Board of MHMR shall provide a certificate to the center recognizing its status as a community center and the local MHMR authority.

(e) A community center may operate only for the purposes defined in the center's plan, the elements of which are described in subsection (a)(1) of this section. As circumstances and needs change, the center may amend the plan with the commissioner's approval.

#### *§401.459. Awarding of Funds.*

(a) A board of trustees may be awarded a performance contract after approval has been received as described in §401.458(a)(3) of this title (relating to Approval of Plan).

(b) No awarding of department funds shall be made without the approval of the board.

(c) Department funds shall be awarded to boards of trustees in conformance with the provisions described in Chapter 401, Subchapter E of this title (relating to Contracts Management), and as required or allowed by the current general appropriations act.

(d) Within the terms of the performance contract, a board of trustees may be awarded federal mental health block grant funds in accordance with the Anti-Drug Abuse Act of 1988 (Public Law 100-690) based upon the availability of such federal funds. The department shall administer and distribute these funds as follows:

(1) The department will give priority in funding to community mental health centers, state hospital and state center community programs, and other designated service providers that have demonstrated an ability to provide effective services to the persons with severe and persistent mental illness, children and adolescents, elderly persons, and persons in minority groups.

(2) Federal mental health block grant funds not expended by community centers in a fiscal year may be carried over, with departmental approval, for the provision of mental health services in the subsequent fiscal year.

(3) The department shall authorize the disbursement of federal mental health block grant funds in monthly payments to each recipient community center. The department shall establish procedures for application, reporting, requesting funds, auditing and accounting procedures for federal funds to comply with federal, state, and departmental regulations and guidelines.

(4) Each recipient community center shall submit to the department assurances that its programs, policies, and procedures comply with the federal and state regulations and that it shall be responsible for audit exceptions that result from expenditure or misuse of federal mental health block grant funds.

(5) The department shall utilize existing administrative and monitoring mechanisms for the federal mental health block grant program. The following mechanisms shall be utilized and modified to reflect and monitor the federal funds within

the recipient community programs: performance contracts, management audits, and program reviews.

(6) The department shall utilize a minimal amount of the federal block grant funds for administration of funds and for program administration and shall disburse all remaining funds received through the federal funding mechanism to the appropriate community programs.

#### *§401.460. Standards of Administration for Boards of Trustees.*

(a) Each board of trustees is accountable to the department for the effective use of all funds received from or through the department and all funds required for local match and is accountable also to those local, state, and federal agencies which may contribute funds for operating the community center.

(b) Boards of trustees shall submit periodic financial and performance reports to the department in a format prescribed by the department no later than the last work day of the month following the end of the reporting period, except for fiscal year-end reports which will be submitted no later than the last work day of the second month following the end of the fiscal year. The submission dates shall be extended for 30-calendar-day increments in unusual circumstances when requested by the community center and approved by the department.

(c) It is expected that each community center will institute effective management procedures which will assure the maximum utilization of all funds received from or through the department and all funds required for local match and will facilitate the achievement of the goal of delivering services of high quality for the lowest possible cost.

(d) Boards of trustees shall obtain advance written approval from the commissioner or designee for any building alterations, renovation and/or repair maintenance expenses exceeding \$50,000 for each project per fiscal year per community center if department or local match funds are to be used.

(e) Boards of trustees must ensure that a community center receives written approval from the department prior to purchase, lease-purchase, or any other transaction, the result of which will be the community center's ownership of real property, including buildings, if any department funds or local funds required to match department funds are involved. A community center must provide written notification to the contracts management office of the department 60 days prior to entering a legally binding obligation to purchase, lease-purchase, or otherwise enter into a transac-

tion, the result of which will be the community center's ownership of real property, including buildings, in cases in which no department funds or local funds required to match department funds are involved. Upon request, the commissioner may waive the 60-day requirement on a case-by-case basis. Notification is not required for donations of real property under the Health and Safety Code, Title 7, §534.019 (formerly Texas Mental Health and Mental Retardation Act, Article 5547-203, §3. 10), that do not require the expenditure of any funds by the community center and that have been approved by the board of trustees.

(1) All notices and requests for approval shall be accompanied by supporting information including, but not necessarily limited to, the following:

(A) the reason for purchasing the property or a brief explanation of the purpose it will serve;

(B) a summary of the plan for paying for the property, including a statement regarding whether departmental funds will be used either directly or in the retirement of any debt associated with the acquisition;

(C) if unimproved, an assessment of the suitability of the property for construction purposes or, if improved, an assessment of the current condition of the buildings;

(D) an appraisal of the property prepared by an appraiser certified by a master appraisal institute; however, this requirement may be waived if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the past two years;

(E) a statement that the board of trustees and executive staff are not participating financially in the transaction and shall derive no other personal benefit from the transaction; and

(F) a statement detailing the need to waive the 60-day requirement if a waiver is being requested.

(2) A community center may not purchase or lease property for an amount that is greater than the property's appraised value unless:

(A) the purchase or lease of that property at that price is necessary;

(B) the board of trustees doc-

uments in the official minutes the reasons why the purchase or lease is necessary at that price; and

(C) a majority of the board approves the transaction.

(f) In acquiring real and personal property pursuant to subsection (e) of this section and constructing improvements in connection with such acquisitions, boards of trustees are authorized to issue bonds or notes in accordance in Texas Civil Statutes, Article 717k-6 and 717q, and may enter into contracts as defined in, in accordance with, and with the effect provided by the Local Government Code, §§271.003-271.009.

(1) The limitations regarding real property and the construction of improvements contained in the Local Government Code, §§271.003-271.009, shall not be applicable to community centers.

(2) Boards of trustees shall ensure that any bonds or notes issued by the community center receive the approval of the attorney general of the State of Texas prior to issuance.

(g) Boards of trustees shall retain all financial records, supporting documents, statistical records, and any other documents pertinent to community center budgets, contracts, performance/workload measure, and persons served for a period of five years after the submission of the final reports. If audit findings have not been resolved at the end of five years, the records shall be retained until resolution of the audit findings.

(h) Each board of trustees shall expend annually its required local match and department funds in the same ratio as the required local match is to the department funds.

(i) Boards of trustees may accept special gifts for long-range projects and plans. These funds must be kept separate from the operating budget of the community center and may not be used for local matching purposes if reserved for long-term projects and plans. An annual accounting of these reserve funds (center trust, endowment, or foundation resources) shall be made to the department.

(j) Boards of trustees shall comply with the Open Meetings Law, Texas Civil Statutes, Article 6252-17, as amended.

(k) Boards of trustees shall require depositories of community center funds to secure deposits through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or to secure deposits using collateral in a manner that protects the deposited funds.

*§401.461. Civil Rights.* Each community center shall provide services in compliance with the Civil Rights Act of 1964, as amended, and shall require the same of subcontractors.

*§401.462. Fiscal Auditing Procedures.*

(a) Each board of trustees shall submit to the department copies of an annual audit of its accounts made by a certified or public accountant licensed by the Texas State Board of Public Accountancy, which the department shall distribute to the governor, the Legislative Budget Board, the Legislative Audit Committee, and others. Such audit shall follow generally accepted auditing standards and shall be in accordance with the most recent edition of "Guidelines for Annual Fiscal Audits of Community MHMR Centers," which is herein adopted by reference as Exhibit A and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(b) The audits will be submitted to the department no later than 120 days following the end of each contract period and shall be approved by the board of trustees. Where the board of trustees declines to approve such audit, it shall attach to each copy of the audit a statement detailing its reason for failure to approve the audit.

*§401.463. References.* Reference is made in this subchapter to the following federal and state laws and rules:

(1) Anti-Drug Abuse Act of 1988 (Public Law 100-690);

(2) Health and Safety Code, Title 7, Chapter 534 (formerly the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-201 et seq. as amended);

(3) Texas Civil Statutes, Article 717k and 717q;

(4) Texas Civil Statutes, Article 6252-17;

(5) Local Government Code, §§271.003-271.009; and

(6) 25 TAC, Chapter 401, Subchapter E, governing Contracts Management.

*§401.464. Distribution.* This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy commissioners, associate and assistant deputy commissioners, directors and section chiefs of Central Office; superintendents/directors of state facilities; and chairpersons, boards of trustees, and executive directors, commu-



nity mental health and mental retardation centers.

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 April 29, 1992.

TRD-9205911      Ann Utley  
                          Chairman  
                          Texas Board of Mental  
                          Health and Mental  
                          Retardation

Proposed date of adoption: June 5, 1992

For further information, please call:(512)  
465-4670

◆            ◆            ◆  
**TITLE 28. INSURANCE**  
**Part I. Texas Department**  
**of Insurance**

**Chapter 19. Agents' Licensing**  
**Subchapter I. Licensing Fees**

• **28 TAC §19.802**

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to §19.802, concerning licensing fees. The amendment adds a new paragraph (22) to subsection (b) setting the application and renewal fees for utilization review agents. This amendment is necessary to implement the provisions of Insurance Code, Article 21.58A.

Jack Evins, deputy commissioner for licensing, 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 sections, and there will be no effect on local employment or local economy.

Mr. Evins also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to collect the fees to offset the regulatory activities of the department in implementing Insurance Code, Article 21.58A. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the proposed section is the cost of the fees set out in the amendment.

Comments on the proposal may be submitted to Jack Evins, Deputy Commissioner for Licensing, Mail Code 105-5A, Texas Department of Insurance, 333 Guadalupe Street, P. O. Box 149104, Austin, Texas 78714-9104.

The amendment is proposed under the Insurance Code, Articles 21.58A and 1.04, and Texas Civil Statutes, Article 6252-13a, §§4 and 5. The Insurance Code, Article 21.58A, §13 grants the board authority to adopt rules and regulations to implement the provisions of Article 21.58A relating to health care utilization review agents. Article 1.04(b) authorizes the board to deter-

mine rules. Texas Civil Statutes, Article 6252-13a, §§4 and 5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedures for adoption of rules by a state administrative agency.

§§19.802. *Amounts of Fees.*

(a) (No change.)

(b) The amounts of fees are as follows:

(1)-(21) (No change.)

(22) utilization review agent;

(A) original application—\$3,892;

(B) renewal—\$3,892.

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 April 29, 1992.

TRD-9205901      Linda K. von Quintus-Dorn  
                          Chief Clerk  
                          Texas Department of  
                          Insurance

Earliest possible date of adoption: June 5, 1992

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



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

**Part XVII. Texas State**  
**Soil and Water**  
**Conservation Board**

**Chapter 523. Audit**  
**requirements for Soil and**  
**Water Conservation Districts**

**Subchapter A. Audits of Dis-**  
**tricts**

• **31 TAC §§523.1-523.8**

The Texas State Soil and Water Conservation Board proposes new §§523. 1-523.8, concerning audit requirements for soil and water conservation districts.

William C. Neiser, director of programs, has determined that there will be fiscal implications as a result of enforcing or administering the sections. There will be no effect on state government. The effect on local government for the first five-years period the rule will be in effect will be an estimated reduction in cost of \$65,000 in 1993 and \$65,000 in 1995.

Mr. Neiser 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 that the cost saving to local soil and water conservation districts will be used to enhance conservation efforts at the local level resulting in a general benefit to the public. 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 Robert G. Buckley, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503.

The new sections are proposed under the Agriculture Code, Chapter 201.020, which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

§523.1. *Policy Statement.* It is the policy of the State Soil and Water Conservation Board to develop and implement audit guidelines that adequately safeguard assets administered within the purview of this agency in a cost effective manner. In accordance with this purpose, §§523.1-523.8 of this title (relating to Audits of Districts) are adopted.

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

District—A soil and water conserva-

tion district created under the Agriculture Code of Texas, Chapter 201.

Manual of fiscal operations—An accounting manual prepared by the State Board designed to be used by each district as a manual of operations.

State board—The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

#### §523.3. Duty of Audit.

(a) The directors of each district created under the Agriculture Code of Texas, Chapter 201, shall have the district's fiscal accounts and records audited as of August 31 of each even numbered year.

(b) In all areas of conflict the provisions of this subchapter shall take precedence over all prior statutory enactments.

(c) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(d) The audit required by this section shall be completed no later than 120 days after the end of each biennial audit period.

§523.4. Form of the Audit. Except as otherwise provided by the *Manual of Fiscal Operations*, the audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants and shall include the auditor's opinion as to the fair presentation of the financial statements taken as a whole.

#### §523.5. Audit Exemption.

(a) A district may elect to file an annual financial report as of August 31 of each year in lieu of the district's compliance with §523.3 of this title (relating to Duty to Audit) provided:

(1) the district had no long term (more than one year) liabilities outstanding during the biennial period other than rent/lease contracts;

(2) the district did not have gross state revenues in excess of \$20,000 in any year of the biennial period;

(3) the district's State Fund cash, receivables, and short term investments balances were not in excess of \$25,000 in any year of the biennial period; and

(4) the district is not otherwise required to have its accounts and records audited in compliance with a funding agreement with any federal, county, or other agency.

(b) The annual financial report must be reviewed and approved by the district directors and so recorded in the minutes of the board meeting at which such action was taken.

(c) The annual financial report must be accompanied by an affidavit signed by the district's current chairman, vice chairman, and secretary attesting to the accuracy and authenticity of the financial report.

(d) Districts governed by this section are subject to periodic audits by the State Board.

§523.6. Access to and Maintenance of District Records. The State Board shall have access to all vouchers, checks, receipts, district fiscal and financial records, and other district records which the State Board considers necessary for the review of an audit report or annual financial report.

#### §523.7. Filing of Audits and Annual Financial Reports.

(a) A copy of the audit report or the annual financial report required by this subchapter shall be filed with the Governor's Office, the Legislative Budget Board, and the State Board.

(b) Districts not exempted by §523.5 of this title (relating to Audit Exemption) must file three copies of the Audit Report with the State Board no later than 120 days after August 31 of even numbered years.

(c) Districts governed by the provisions of §523.5 of this title must file three copies of the Annual Financial Report with the State Board no later than 60 days after August 31 of each year.

(d) The filings required by subsections (b) and (c) of this section will satisfy the filing requirement for subsection (a) of this section.

(e) After proper review the State Board will forward the required copies of the audit report or the annual financial report to the Governor's Office and the Legislative Budget Board.

#### §523.8. District Divisions and Reorganizations.

(a) Other sections of this subchapter notwithstanding an audit of the accounts and records of a district dividing, reorganizing, or dissolving under the provisions of the Agriculture Code, Chapter 201, Subchapter C, must be performed by an individual meeting the requirements of §523.3(c) of this title (relating to Duty to Audit).

(b) The period to be covered by the audit is from the date of the most recent audit or financial report thru the date of division, reorganization, or dissolution.

(c) Three copies of the audit required by this section must be filed with the State Board no later than 15 days prior to the date of division, reorganization, or dissolution.

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 Temple, Texas on April 24, 1992.

TRD-9205763

Robert G. Buckley  
Executive Director  
Texas State Soil and  
Water Conservation  
Board

Earliest possible date of adoption: June 5, 1992

For further information, please call: (817) 773-2250





NAYLA RAAD  
GRADE 1  
BELLAIRE CHRISTIAN  
ACADEMY

I Love Jesus

# Withdrawn Sections

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

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## TITLE 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 125. Travel and Transportation Division

##### Travel Management Services

- 1 TAC §§125.1, 125.3, 125.5, 125.7, 125.9, 125.11, 125.13, 125.17, 125.19, 125.21, 125.23

The General Services Commission has withdrawn from consideration for permanent adoption a proposed amended §§125.1, 125.3, 125.5, 125.7, 125.9, 125.11, 125.13, 125.17, 125.19, 125.21, and 125.23 which appeared in the December 6, 1991, issue of the *Texas Register* (16 TexReg 6981). The effective date of this withdrawal is April 29, 1992.

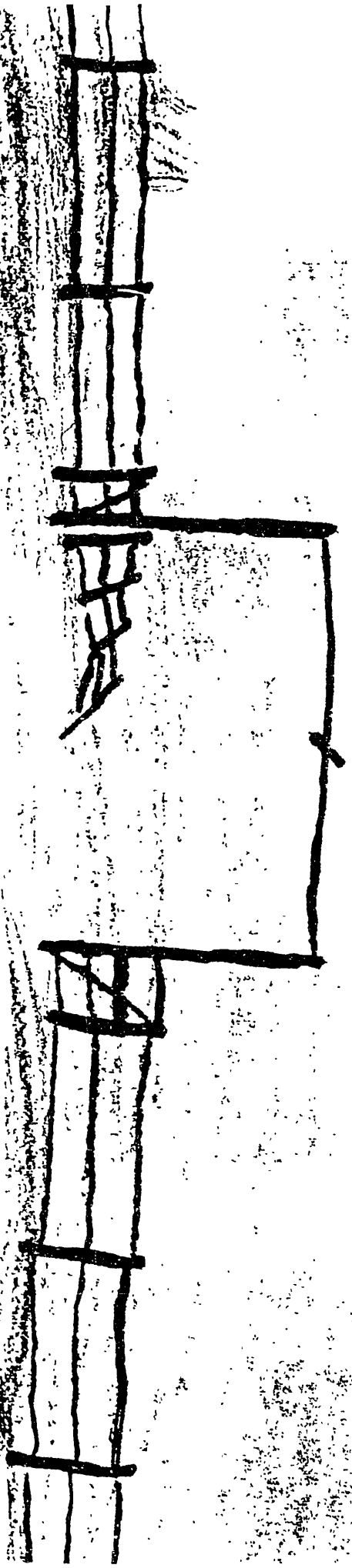
Issued in Austin, Texas, on April 29, 1992

TRD-9205914      Judith M. Porras  
                          General Counsel  
                          General Services  
                          Commission

Effective date: April 29, 1992

For further information, please call: (512) 463-3446





THOMAS CHISBY  
GRADE 6  
BENJAMIN CHRISTIAN ADVANCE

# Adopted Sections

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

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

## TITLE 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 113. Central Purchasing Division

##### Purchasing

###### • 1 TAC §§113.2, 113.13, 113.16

The General Services Commission adopts amendments to §113.2, §113.13, and new §113.16, concerning definitions and central purchasing, without changes to the proposed text as published in the February 7, 1992, issue of the *Texas Register* (17 TexReg 981).

The amendment will allow for a more efficient reporting system of school bus purchases, enhanced statutory compliance, and improved efficiency in acquiring unique, necessary goods or services.

Section 113.13 deletes a requirement for reporting school bus purchase information to the Texas Education Agency, and new §113.16 provides guidelines for processing unsolicited proposals.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 601b, §3.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

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 April 27, 1992.

TRD-9205819 Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: May 18, 1992

Proposal publication date: February 7, 1992

For further information, please call: (512) 463-3446

###### • 1 TAC §113.73

The General Services Commission adopts an amendment to §113.73, which allows state agencies to maintain all files associated with the delegation of authority to sell surplus or

salvage property, without changes to the proposed text as published in the February 7, 1992, issue of the *Texas Register* (17 TexReg 981).

The amendment will allow for a reduction in duplication of file maintenance resulting in a more efficient and economical process.

The section allows state agencies to maintain files associated with their disposition of surplus or salvage property under delegated authority.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3.01, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

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 April 27, 1992.

TRD-9205820 Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: May 18, 1992

Proposal publication date: February 7, 1992

For further information, please call: (512) 463-3446

#### Chapter 115. Building and Property Services Division

##### State Leased Property

###### • 1 TAC §§115.35, §115.36

The General Services Commission adopts amendments to §115.35 and §115.36, concerning evaluation of competitive bids for lease space and competitive sealed proposals for lease space, without changes to the proposed text as published in the March 10, 1992, issue of the *Texas Register* (17 TexReg 1797).

The sections are adopted to clarify bid evaluation procedures and to improve the efficiency in obtaining space leases.

The amendment to §115.35 sets forth the method for evaluation of bids in regard to cost, including the evaluation of escalation factors in such bids. The amendment to §115.36 sets forth circumstances and procedures for competitive sealed proposals and

competitive negotiation for lease space.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 601b, §5.15, which authorizes the General Services Commission to promulgate rules to necessary to accomplish the purposes of Article 5.

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 April 27, 1992.

TRD-9205818 Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: May 18, 1992

Proposal publication date: March 10, 1992

For further information, please call: (512) 463-3446

#### Chapter 121. Telecommunications Services Division

##### Telecommunications Services

###### • 1 TAC §121.6

The General Services Commission adopts the repeal of §121.6, concerning usage of the statewide telecommunications system and requests for additional services on the system, without changes to the proposed text as published in the February 7, 1992, issue of the *Texas Register* (17 TexReg 982).

Repeal of this section as is will improve efficiency in implementing the mandatory use of TEX-AN by state agencies.

The section requires the use of TEX-AN except when granted a waiver by DIR and TSD. The section also sets forth procedures for requesting waivers and the criteria for evaluating the requests.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 601b, Article 10, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 10.

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 April 27, 1992.

TRD-9205815

Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: May 18, 1992

Proposal publication date: February 7, 1992

For further information, please call: (512)  
463-3446

◆ ◆ ◆  
• 1 TAC §121.6

The General Services Commission adopts new §121.6, which clarifies and expands the procedures state agencies as defined in Texas Civil Statutes, Article 601b, §1.02(2) must use in order to obtain a waiver from mandatory use of the state telecommunications system (TEX-AN). The section also reorganizes and clarifies the remaining subsections of §121.6 without making substantive changes. The section is adopted without changes to the proposed text as published in the February 7, 1992, issue of the *Texas Register* (17 TexReg 982).

The section is necessary to implement the establishment of orderly procedures by which state agencies subject to the mandatory use of TEX-AN may obtain a waiver from the Telecommunications Services Division of the General Services Commission.

The section requires the use of TEX-AN except when granted a waiver by DIR and TSD. The section also sets forth procedures for requesting waivers and the criteria for evaluating the requests.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 601b, Article 10, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 10.

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 April 27, 1992.

TRD-9205816

Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: May 18, 1992

Proposal publication date: February 7, 1992

For further information, please call: (512)  
463-3446

◆ ◆ ◆  
• 1 TAC §121.11

The General Services Commission adopts new §121.11, concerning acquisition, installation, and maintenance of terminal telephone equipment for the Capitol Complex Telephone System (CCTS), without changes to the proposed text as published in the February 7, 1992, issue of the *Texas Register* (17 TexReg 984).

The section will establish orderly procedures by which the CCTS user community can obtain and maintain terminal telephone equipment.

The section defines new equipment and refurbished equipment and offers agencies a choice of selecting new or refurbished equipment.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 601b, Article 10, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 10.

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 April 27, 1992.

TRD-9205817

Judith M. Porras  
General Counsel  
General Services  
Commission

Effective date: May 18, 1992

Proposal publication date: February 7, 1992

For further information, please call: (512)  
463-3446

◆ ◆ ◆  
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 (TDHCA) adopts new §9.9, concerning the allocation of program funds under the Texas Community Development Program, without changes to the proposed text as published in the February 25, 1992, issue of the *Texas Register* (17 TexReg 1494).

The new section establishes the application requirements, selection procedures, and scoring criteria for the Colonia fund under the Texas Community Development Program.

The new section contains the procedures applicable to the second 1991 competition.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4413(501), §2.07, which provides TDHCA with the authority to allocate community development block grant nonentitlement area funds to eligible counties and municipalities according to department rules.

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 April 28, 1992.

TRD-9205904

Anne O. Paddock  
Assistant General Counsel  
Texas Department of  
Housing Community  
Affairs

Effective date: May 20, 1992

Proposal publication date: February 25, 1992

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

◆ ◆ ◆  
TITLE 16. ECONOMIC  
REGULATION

Part I. Railroad  
Commission of Texas

Chapter 3. Oil and Gas  
Division

Conservation Rules and Regu-  
lations

The Railroad Commission of Texas adopts the repeal of 16 T.A.C. 3.30 and amendments to 16 T.A.C. § 3.31, 3.34, and 3.45 regarding gas nominations required, gas well allowable, gas to be produced and purchased ratably, and gas-oil ratio. Sections 3.31, 3.34, and 3.49 are adopted with changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1163). Section 3.30 is adopted without changes and will not be republished.

The Railroad Commission has made changes to §§3.31(c)-(k), 3.34(f) and (g), and 3.49(b) in response to comments received. These changes to the proposal eliminate the decline factor, replace necessary adjustments with operator forecasts, simplify the process of determining monthly lawful market demand, more accurately determine well capability, allow automatic assignment of special allowables, eliminate the regular @, and allow limited wells to accrue underproduction.

The first change was in §3.31 and §3.34 to change "commission representative" to "commission designee."

The second change was in § 3.31(d)(1) to change the last sentence from "The lawful market demand is the first prior year's allowable month's production multiplied by the calculated decline factor plus inactive well production plus necessary adjustments." to "The lawful reservoir market demand for pro-rated reservoirs shall be equal to the adjusted reservoir market demand forecast adjusted by a forecast correction adjustment, a supplemental change adjustment, and a commission adjustment." Both the published and adopted versions base the market demand determination on prior production and both eliminate purchaser nominations. However, the adopted version will allow operators to file optional forecasts instead of the proposed

requests for necessary adjustments which comments indicated were burdensome.

The third change was to combine and modify published §3.31(d)(1)(B) and (D) into adopted §3.31(d)(1)(C).

The fourth change was to delete proposed §3.31(d)(1)(C) and (d)(3) to eliminate the "calculated decline factor."

The fifth change was to clarify and combine published §3.31(d)(1)(E) and (d)(2)(D)-(E) concerning "commission adjustments" into adopted §3.31(d)(1)(G).

The sixth change was to delete published §3.31(d)(1)(E), (d)(2)(A)-(C), and (d)(2)(E) concerning operator requested adjustments, and replace them with adopted §3.31(d)(1)(B), (d)(1)(D)-(F), and (d)(2). This change replaces the "necessary adjustment" provisions with the much simpler operator forecast.

The seventh change was in §3.31(e). Both the published and adopted versions eliminate the "U", "L", and "O" allowable codes which adjusted allowables downward. The published version limited a well's allowable to the latest deliverability test on file. The adopted version will limit a well's allowable to capability unless the operator files a substitute capability determination. Also, the adopted version eliminates the "regular @" allowable code in §3.31(i)(4)(C). Issues regarding the "immediate @" are discussed later in this preamble.

The eighth change was in §3.31(f) and §3.34(f)(1) to add the word "test" after "deliverability." This change merely clarifies that deliverability is referring to "deliverability test" not "capability." Also in §3.31(f) changes were made to clarify that the reservoir factor and initial allowable allocation will be by deliverability, but allowables will be limited by capability.

The ninth change was in §3.31(g) for clarification to add definitions for "prorated field" and "non-prorated field". The current rules do not define prorated and non-prorated fields although those terms are used in other provisions. Also, the definition of "limited well" was changed by adding that a limited well is a nonprorated well "in a prorated field (other than a special or administrative special allowable well)" and by changing the end of the definition from "as determined by the most recent deliverability test on file with the commission" to "as determined by subsection (e) of this section." A limited well will be limited on the basis of its capability, not deliverability.

The 10th change was to add the definition of "maximum allowable" as §3.31(g)(9). "Maximum allowable" is used in several places in the current rules relating to supplementation of nonprorated allowables. This change consolidates the term's applicability to various well types. Section 3.31(h)(2) and (4) and §3.49 were revised to utilize the defined term "maximum allowable."

The 11th change was to add a provision in §3.31(h)(1) and (i)(4) to allow a limited well to accumulate underage.

The 12th change was to delete §3.31(h)(3) in response to the change that would allow limited wells to accrue underproduction. This

subsection addressed reinstatement of limited well underproduction when those wells shifted from prorated to nonprorated status.

The 13th change was in §3.31(h)(4) and §3.49(b)(3) for clarification, providing for the adjustment of allowables for certain non-prorated wells to capability instead of by "deliverability test."

The 14th change was in §3.31(j)(1)(A) and (3)(A) to clarify that deliverability tests will be used to determine when the allocation formula will be suspended.

The 15th change was in §3.31(k). The adopted version will expedite the process for administrative special allowable status by automatically setting a well to special allowable status if its capability drops below 100 mcf/day and will also give the operator the opportunity to request that the automatic adjustment not apply to its well.

The last change was in §3.34 to correct references to §3.31.

These amendments are being adopted to reform the current gas prorationing system administered by the commission under state law. This reform effort was initiated in 1983 in response to criticism regarding the fairness and complexity of the current system. The reform efforts have continued since that time and seven proposals have been published in the Texas Register. Additionally, "Blue Ribbon Committees" were formed in 1983, 1986, and 1988. These amendments are based on the expertise of the commission and the cumulative knowledge the commission has obtained in part from the comments to and study of all of the proposals. Changes to the published version of this proposal are substantially, if not all, in response to comments received on this proposal. The commission held hearings for this docket on October 9 and 10, 1991 and February 26, 1992. These dockets have an official record containing 495 pages of transcript, over 268 appearance slips, over 1,000 pages of written comments, and 84 oral comments. Changes to the published version were presented to the commission at its regular meeting on March 30, 1992. At that time, the commission directed the staff to informally circulate the amended version to the commission's rulemaking notice list and to all persons expressing an interest in this rulemaking. Also, the commission directed the staff to hold a public question and answer meeting for interested persons. The revised version was circulated and a meeting was held. Over 50 persons attended this meeting, which lasted approximately five hours. Subsequently, 18 persons filed written comments on the changes. These written comments contain over 220 pages of text, graphs, and exhibits.

The primary goals of these amendments are simplification of the present system by removal of complex mechanisms involving alphabet allowables, increased protection of correlative rights in a changing marketplace, more accurate determination of lawful market demand and a more accurate determination of well capability. The ancillary result of achieving these goals is better protection of correlative rights and statutory compliance. Additionally, the commission has strived to

achieve these goals while making the system simpler. These amendments change the way the commission determines the lawful reservoir market demand and the framework for the allocation of the reservoir allowable to the wells in the reservoir; eliminate the requirement of filing nominations; establish a procedure for determining lawful market demand for each reservoir based on prior production and other relevant information; establish an enhanced well capability determination routine; eliminate the "U", "L", "@", and "O" allowable routines; and establish an allowable determination routine for nonprorated and associated wells.

The following is an explanation of the effect of these rules as adopted:

The rules as published and adopted will eliminate purchaser nominations as the starting point for determining the lawful reservoir market demand. Commission records show that purchaser nominations frequently substantially exceed production. Many purchasers do not even participate in the nominations process. This rulemaking adopts the repeal of §3.30, which primarily contains provisions relating to the filing of purchaser nominations. Section 3.30 also contained provisions that related to the commission's ratable purchasing and production requirements in §3.34. These provisions have been moved into §3.34. The amendments to §3.34 are not intended to effect any substantive changes.

Reservoir market demand, for prorated fields only, will be initially determined on the basis of prior production and optional operator forecasts. The commission will generate a market demand forecast for each prorated and limited well that is equal to its production during the same month last year and for special or administrative special allowable wells that is equal to the well's production during the most recently reported production month. This will be totaled by operator in the reservoir. For example, if the commission is determining the allowable for September 1992 and the operator's two wells produced 10,000 and 5,000 mcf respectively during September 1991, the commission will generate a September 1992 "operator reservoir market demand forecast" of 15,000 mcf for the operator. However, operators can file their own "optional operator forecast" for their wells in the reservoir. The forecast cannot exceed the total capability of their wells or be less than zero.

Prior production in the same month last year is a good indicator of the current market demand. The process of generating market demand forecasts on the basis of prior production should eliminate a significant number of optional operator forecast filings because operators will only need to file a forecast when their conditions have changed. Moreover, prior production provides a reasonable estimate if the operator does not file a forecast. Both the proposed and adopted versions shifted the source of market information from the purchasers to the producers. Producers are more likely to know the market demand for their gas production because the nature of the gas pipeline industry has changed significantly in recent years. The majority of all produced gas is now transported by pipelines as a transporter rather than as a merchant.



The forecasts will be subject to four adjustments: a capability adjustment, a reservoir forecast correction adjustment, a supplemental change adjustment, and a commission adjustment by reservoir. The "operator reservoir market demand forecasts" will be adjusted in a manner similar to the way the commission currently works with the purchaser nominations in the "A-Sheet." First, each "operator reservoir market demand forecast" will be adjusted to ensure that the forecasts (both those generated by the commission and those filed by the operators) do not exceed the total capability of the operator's wells. The sum of the forecasts for operators in the field that have been adjusted to capability is the "adjusted reservoir market demand forecast." This will be subject to an adjustment similar to the current adjustment reflected in columns 2, 4, and 5 of the A-Sheet. This "forecast correction adjustment" is the difference between the reservoir production and the "adjusted reservoir market demand forecast" adjusted by the "supplemental change adjustment" and the "commission adjustment" three months ago. This adjustment keeps reservoir forecasts in balance with production and eliminates most problems associated with under or over forecasting.

The supplemental change adjustment will be used for the same purposes as column 3 on the current A-Sheet ("Total Supplemental Changes-3rd Month Previous"). Examples of such adjustments include reservoir allowable adjustment for the upward revision of allowables to cover overproduction from a nonprorated well, a change of well or well test status during a prior month, or implementing the provisions of a final order that call for the modification of field or well production status. These adjustments are ministerial in nature.

The adjustment calculated in columns 6, 7, and 8 of the current A-Sheet, which put limited well underage back into the reservoir, will be eliminated. Additionally, the extra adjustment (column 10) will be eliminated.

The ability of the commission to make further adjustments to the reservoir market demand determination with a "commission adjustment" is based on the principle that the commission is not bound by the mathematical total of the producer forecasts for a reservoir. If relevant facts indicate the initial market demand determination for a reservoir is incorrect, the commission may make an adjustment to correct the inaccuracy.

Finally, the commission may reject or modify an optional operator forecast if the forecasts are consistently inaccurate or being used to manipulate the allocation of gas rather than to determine the correct market demand.

For individual well allowable determinations, these amendments will eliminate all of the "alphabet allowables." The "U", "L", "O", and "Regular @" will be replaced by an enhanced capability determination routine. A well's capability will be determined as the lesser of the G-10 deliverability or the highest monthly production during the last six months. Alternatively, an operator may submit a "substitute capability determination" that has been determined by a registered professional engineer based on a well test or other acceptable information using generally accepted engineering

practices or by an independent tester on the basis of a well test. The substitute capability may be used for a six month period, unless it is rejected by the commission for good cause. This capability determination routine will do a better job than the current system of addressing concerns that allowables are assigned to wells that are not capable of producing the allowable. Because the enhanced capability routine is so stringent, wells limited by their capability will be allowed to accumulate underage.

Allowables for wells in one-well fields, wells in nonprorated fields except special allowable wells, and §3.49(b) gas wells will have their allowables determined as the lesser of: the maximum allowable under applicable rules; capability; or for wells with reported production within any of the last three months, the highest production during those months. The allowable for special allowable wells shall be its amount of production during the most recently reported production month. As a practical matter, any limitation on these wells below the maximum allowable will not be significant because allowables will be revised up to the maximum allowable to cover any overproduction.

Amendments to §3.31(k) will expedite the process for administrative special allowable status by automatically setting a well to special allowable status if its capability drops below 100 mcf/day.

These amendments will generally eliminate the need, if any, for "immediate @s". Most "immediate @s" were acquired to prevent excess underproduction that caused the field to receive a "O" allowable. Because the "O" has been eliminated and underproduction will no longer have an adverse effect, it appears that many "immediate @s" are no longer necessary. Additionally, if "immediate @s" were implemented because of concerns that allowables were assigned to incapable wells, the new enhanced capability routine should alleviate these concerns.

The following is a summary of the comments.

Some commenters suggested that the commission should not change its current system of gas prorationing. The commission disagrees. Those suggesting that the commission retain its current system point to evidence that 1991's production was 85% of the allowables actually assigned. That statistic indicates that the current system assigned allowables by as much as 15% above market demand. That amount of error is nearly as large as the total production from some of the largest gas producing states. The commission believes that the aspects of the current system that cause this error are unacceptable and erode the ability of the commission to protect correlative rights.

Other reasons support the commission's efforts to reform the current gas proration system as well. The current system is very complex. These amendments are designed to simplify the system to the greatest degree possible so that more operators will be able to predict how and understand the way the system works. Changes in the nature of the pipeline industry also support the commission's efforts to use information other than

purchaser nominations as the starting point of a market demand determination. Additionally, concerns about assignment of allowables to incapable wells justify changes in the way the commission determines a well's capability. Finally, concerns regarding protection of correlative rights justify the commission's examination of the way it allocates reservoir allowables.

Some commenters commended the commission for using prior production as the starting point for market demand determinations, while other commenters stated that prior production is unreliable as an indicator of future market demand. Most commenters agreed that purchaser nominations are unreliable. In the commission's opinion, a system using a combination of prior production and producer forecasts will provide the most accurate data to begin its process of determining reservoir market demand. Section 3.31(d) has been revised in response to these comments. The revision calls for a forecast to be determined by the commission for each operator in a reservoir. The forecast would be determined on the basis of the operator's well's prior production. However, each operator would be allowed to file an optional forecast if the operator determined that the forecast based on prior production was inaccurate.

Several commenters were critical of the proposals methodology and use of a calculated decline factor to revise prior production in the market demand determination. The commission agrees that the calculated decline factor is problematic. Therefore, the decline factor has been removed. Declines and increases in reservoir market demand will be adequately reflected in the optional forecasts and prior production without the addition of a decline factor.

Many commenters complained that the "necessary adjustment" process is overly burdensome and complex. The commission agrees. The objectives the "necessary adjustment" provisions were intended to accomplish will be achieved with a simpler system of optional operator forecasts, calculated forecast correction, and the commission adjustment.

Several commenters stated that the commission should not use a "statewide adjustment." Under its broad statutory authority to regulate gas production and determine lawful market demand, the commission may consider facts other than the producer forecasts and prior production when determining lawful reservoir market demand. Some commenters, also suggested, that the commission's proposed procedure is illegal. The commission disagrees. As long as the end result is to determine an accurate market demand determination for the reservoir, the statutory mandate has been satisfied.

Several commenters expressed concern that allowables should not be assigned to incapable wells. The commission agrees. Under the existing system, deliverability tests served as the primary means of preventing allowable assignment to incapable wells. A complex set of routines ("@", "U", and "L") also served to limit allowables to the highest production within the last 12 months. The nature of the deliverability test precludes it from being a totally accurate assessment of a well's capa-

bility to produce over an entire month. Section 3.31(e) was revised in response to these concerns. A more stringent, yet simpler capability routine" will replace the "@", "U", and "L" routine. The routine uses the lesser of the well's deliverability test or the highest monthly production within the last six months as the well's capability. The commission will be willing to consider revisions to the "look back" period for specific fields in field rule proceedings. Unique reservoir characteristics, such as low permeability and high decline rates, may justify reviewing fewer months of production when determining well capabilities. Longer review periods may be feasible for mature fields with lower decline rates. Revisions to the "look back" period for specific fields may also address the concerns that might otherwise justify the retention of "immediate @s" after the adoption of these rules. No well will be assigned an allowable in excess of its capability. Because there are some situations where the six month "look back" period might result in an inaccurate capability determination, an operator may submit a substitute capability determination. To balance the stringency of this capability routine, wells limited by this routine will be allowed to accrue underage to the extent the well does not produce the limited allowable. Additionally, the prior practice of returning underage from these wells to the reservoir will be discontinued.

Several commenters opposed the restriction that required the production review routine to consider at least seven months of prior production and the effect that restriction would have on "immediate @s". The capability routine discussed above obviates the need for this restriction; however, the commission has concerns that "immediate @s" may no longer be necessary. The commission will reconsider all "immediate @s". First, "immediate @s" will no longer be established by an administrative process. Second, any new "immediate @s" will only be permitted if established by a field rule proceeding with evidence shown that the "immediate @" is needed for some lawful purpose. Third, all "immediate @s" established administratively will be canceled. Any reinstatement of an administratively granted "immediate @" will only be permitted if established by a field rule proceeding with evidence shown that the "immediate @" is needed for some lawful purpose. Fourth, fields that have an "immediate @" established by final order will have a field rule review proceeding called pursuant to §1.47 of the commission's General Rules of Practice and Procedure. Those proceedings will be called to require the operators in the field to show cause why the "immediate @" rule for the field should not be removed.

Several commenters suggested that the commission should make administrative special allowables automatic. The commission agrees. Section 3.30(k) will automatically establish an administrative special allowable for a well when its capability drops to 100 mcf. An operator may request that the commission refrain from automatic action.

A few commenters stated that the commission should revise §3.34 to eliminate all ratable purchasing requirements for purchasers. The commission disagrees. First, no substan-

tive changes to §3.34 are intended to be addressed by this rulemaking. Second, current requirements of §3.34 are necessary to enforce the provisions of the Common Purchaser Act.

Finally, several commenters stated that the commission should not use gas prorationing as a means of restricting gas production below market demand. The commission has never intended and does not intend to use this regulation to affect prices or to restrict gas allowables below lawful market demand. These rules are intended to enable the commission to fulfill its statutory mandate to accurately determine lawful market demand and set the reservoir allowables to lawful market demand, and to protect correlative rights.

The following groups and associations generally supported the proposal but filed comments recommending changes in the sections as published: Anadarko Petroleum Corporation, Apache Corporation, Association of Texas Intrastate Natural Gas Pipelines, East Texas Producers and Royalty Owners Association, Enron Oil and Gas Company, Forest Oil Corporation, Houston Lighting and Power, Mesa Limited Partnership, North Texas Oil and Gas Association, Panhandle Producers and Royalty Owners Association, Plains Resources, Texas Gas Association, Texas Independent Producers and Royalty Owners Association, Texas Utilities Fuel Company, Valero Transmission, L.P., West Central Texas Oil and Gas Association.

The following groups and associations generally opposed the proposal and filed comments recommending changes in the sections as published: Arco Oil and Gas Company, Associated Gas Distributors, Chevron U.S.A. Inc., Colorado Interstate Gas Company, Conoco Inc., Copano Company, Exxon Company, U.S.A., Floyd Oil Company, Harrison Interests, Ltd., Hoechst Celanese Corporation, Kerr-McGee Corporation, Lonesome Dove Oil Corporation, Longhorn Royalty Company, Marathon Oil Company, Maxus Exploration Company, New England Power Company, Oryx Energy Company, OxyChem-Occidental Chemical Corporation, Pennzoil Exploration and Production Company, Permian Basin Petroleum Association, Phillips Petroleum Company, Process Gas Consumers Groups, Shell Western E&P Inc., E. N. Smith, III Energy Corporation, Sonat Exploration Company, Texaco Exploration and Production Inc., Texas Chemical Council, Texas Independents for Natural Gas, Texas Mid-Continent Oil & Gas Association, Transamerican Natural Gas Corporation, Union Pacific Resources Company, United Distribution Companies, Verado Energy Inc., Winchester Oil and Gas Operations.

• 16 TAC §§3.30

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 April 28, 1992.

TRD-9205902

Lena Guerrero  
Chairman  
Railroad Commission of  
Texas

Effective date: July 1, 1992

Proposal publication date: February 11, 1992

For further information, please call: (512) 463-6941

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• 16 TAC §§3.31, 3.34, 3.49

The amendments are adopted under the Texas Natural Resources Code, §81.051, 81.052, 85.046, 85.053, 85.055, 85.201-85.203, 86.011, 86.012, 86.041, 86.042, 86.081, 86.083-86.090, 86.094, 111.083, 111.090, and 111.133, which provides the Railroad Commission of Texas with the authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent waste of oil and gas in drilling and producing operations; to determine the status of gas production from all gas reservoirs; to distribute, prorate and apportion allowable production; to determine the lawful market demand for gas to be produced from each reservoir; to adjust correlative rights and opportunities; to determine the daily allowable production for each gas well; to effectuate the provisions and purposes of Chapter 86 of the Natural Resources Code; to conserve and prevent waste of gas; to prevent discrimination in the production and purchasing of gas; to prevent monopolistic practices which may be injurious to the general public; and to regulate common purchasers of gas to achieve the prior purposes.

§3.31. Gas Well Allowables.

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

(c) Requirements for gas wells in a field for which an allocation formula has been adopted.

(1) If acreage is a factor in the allocation formula, a certified plat showing the acreage assigned to the well for proration purposes shall be submitted. The plat must be accompanied by a statement that all of the acreage claimed can reasonably be considered productive of gas and that the distance limitations of the field rules have not been exceeded. If all of the acreage claimed is not contained in a single lease, a certificate of pooling authority must be submitted, on the appropriate commission form. If the distance limitations of the field rules are shown to have been exceeded, the plat must show the number of acres within and beyond the distance limitations. An operator may request an exception to the distance limitations which may be administratively approved by the commission or a commission designee if all the acreage can be considered productive. If approval of the request is declined or protest is received, the request may be set for hearing. If all of the acreage cannot be considered productive, the plat must also show the productive limit of the acreage. If a plat shows acreage in the unit in excess of

the maximum number of acres permitted by the field rules, it will not be accepted.

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

(d) Determining prorated reservoir allowables and lawful market demand.

(1) On or before the 20th day of the preceding month, the commission will determine the lawful market demand for gas to be produced from each reservoir during the upcoming allowable month. The monthly reservoir allowable shall be equal to the lawful market demand for that reservoir. The lawful reservoir market demand for prorated reservoirs shall be equal to the adjusted reservoir market demand forecast adjusted by a forecast correction adjustment, a supplemental change adjustment, and a commission adjustment.

(A) Allowable month—the month during which allowables determined pursuant to this section will be effective.

(B) Adjusted reservoir market demand forecast—the sum of each operator reservoir market demand forecast that has been adjusted downward in order not to exceed the total capability of the operator's wells for each reservoir during the allowable month.

(C) Operator reservoir market demand forecast—the sum of the operator's well forecasts determined by the commission pursuant to this subparagraph. The commission will determine a forecast for each well that will be active during the allowable month that for prorated and limited wells is equal to the well's production during the same allowable month in the prior year and for special or administrative special allowable wells is equal to the well's production during the most recently reported production month. If the well had no reported production during the allowable month in the prior year, the forecast shall be equal to the well's capability, unless the well has reported production during any of the three most recently reported production months, then the largest monthly production during those months will be used instead. Alternatively, the operator reservoir market demand forecast may be determined by an optional operator forecast.

(D) Optional operator forecast—the commission designated operator may file an optional market demand forecast for all of the operator's wells in the reservoir that is equal to the anticipated market demand for the production from the operator's wells in the field during the allowable month. The optional operator forecast for the operator's wells in the reservoir can be no greater than the total capability of

the operator's wells or less than zero. An optional operator forecast must be filed by the fifth day of the month preceding the allowable month.

(E) Forecast correction adjustment—the difference between the reservoir production and the adjusted reservoir market demand forecast adjusted by the supplemental change adjustment and commission adjustment during the most recently reported production month.

(F) Supplemental change adjustment—any adjustment to the reservoir allowable that is necessary to account for an automatic allowable revision in a prior month, a change of well or well test status during a prior month, the provisions of a final order modifying field or well production status, or any other ministerial change.

(G) Commission adjustment—any other adjustments to the adjusted reservoir market demand forecast that the commission determines are necessary.

(2) The commission may reject or modify any optional operator forecast if it determines that the forecast is inaccurate or being used to manipulate the allocation of gas rather than to determine the reasonable market demand.

(e) Well capability.

(1) No gas well shall be given an allowable in excess of its capability, which is the lesser of the well's latest deliverability test on file with the commission or the well's highest monthly production during any of the six most recently reported production months. The capability for a well that is new to the reservoir and has been active for less than nine months shall be determined by the well's latest deliverability test on file with the commission.

(2) An operator may submit a substitute capability determination for a well that represents the maximum monthly production capability of the well under normal operating conditions for a specific six month period.

(A) The determination may be made on the basis of a well test or other acceptable information by a registered professional engineer who certifies that the determination was made by the engineer or under the supervision of the engineer, and that the capability has been determined in accordance with generally accepted engineering practices. Alternatively, the substitute capability determination may be made by an independent tester on the basis of a well test conducted in accordance with §3.28(c) of this title (relating to Potential and Deliverability of Gas Wells to be

Ascertained and Reported)(Statewide Rule 28). The request for a substitute capability must be submitted on the appropriate form.

(B) The commission or a commission designee may reject any substitute capability determination for good cause.

(C) The capability determined pursuant to this paragraph shall be used as the well's capability for a period of six months from the effective date of the determination, unless an affected person files a protest alleging, with specificity, the inaccuracy or invalidity of the determination. If a protest is filed, the commission may set the matter for hearing. A protested substitute capability determination shall be effective on the intended effective date, unless the commission orders otherwise. If the commission determines that the protested substitute capability was incorrect, appropriate allowable or status adjustments will be made for the affected well.

(f) Fields operating under statewide rules.

(1) A statewide prorated field is any gas field in which no special field rules have been adopted and in which at least one well in the field has a current reported deliverability test of greater than 200 Mcf a day. Daily allowable production of gas from individual wells in a statewide prorated field shall be determined by allocating the allowable production among the individual wells in the proportion that each well's deliverability (based on the latest deliverability test of record) bears to the summation of the most recent reported deliverability tests of all wells producing from the same field. Allocated allowables shall be subject to the well capability provisions of this section.

(2) A statewide exempt field is any gas field in which no special field rules have been adopted and in which no well in the field has a current reported deliverability test of greater than 200 Mcf a day. Wells in statewide exempt fields shall be assigned allowables equal to their capacity to produce.

(g) Definitions of prorated and nonprorated wells and fields.

(1) A prorated well is a well for which an allowable is determined by an allocation formula.

(2) A nonprorated well is a well for which an allowable is not determined by an allocation formula.

(3) A prorated field is a field that has two or more wells one of which is a prorated well.

(4) A nonprorated field is any field that is not a prorated field.

(5) A limited well is a nonprorated well in a prorated field (other than a special or administrative special allowable well) with an allowable set below the maximum allowable it would receive under the allocation formula. A limited well shall be assigned an allowable at the rate that the well is capable of producing as determined by subsection (e) of this section.

(6) A special allowable well is a nonprorated well granted a fixed allowable by the commission after notice and hearing.

(7) An administrative special allowable well is a nonprorated well that has been granted a fixed allowable pursuant to subsection (k) of this section.

(8) Exempt allowable (X) wells are nonprorated wells in an exempt field and are assigned an allowable on a field-wide basis that allows wells to produce at capacity.

(9) The maximum allowable for a well is the largest allowable that can be assigned under applicable rules. For a limited well, the maximum allowable is the allowable the well would receive under the allocation formula. For a special allowable well, the maximum allowable is the allowable assigned pursuant to subsection (g)(6). For an administrative special allowable well, the maximum allowable is the lesser of 100 Mcf/day or the allowable the well would receive under the allocation formula. For a well in a one well field, the maximum allowable is the well's deliverability based on the latest deliverability test of record. For an associated gas well, the maximum allowable is the gas well allowable calculated by §3.49(b)(1) or (2) of this title (relating to gas-oil ratio) (Statewide Rule 49).

(h) Allowable adjustments and balancing provisions for nonprorated wells.

(1) A nonprorated well shall not be allowed to accumulate underproduction. However, a limited well shall be entitled to accumulate underage up to the well's capability each month.

(2) If the most recent production figures reported to the commission show a nonprorated well to be overproduced, the allowable will be revised to cover overproduction up to the maximum allowable. If the indicated capability of a nonprorated well to produce, plus its latest recorded overproduction, is less than its maximum allowable, sufficient allowable will be assigned to balance the allowable with production.

(3) The allowable for wells in nonprorated fields, except for special and administrative special allowable wells, shall be limited to the lesser of:

(A) the well's maximum allowable;

(B) the well's capability as determined by subsection (e) of this section; or

(C) the highest monthly production during those months averaged to a daily amount for wells that reported production during any of the three most recently reported production months.

(4) The allowable for special and administrative special allowable wells shall be its amount of production during the most recently reported production month.

(i) Balancing provisions for overproduction and underproduction of gas for wells completed in prorated gas fields.

(1) Balancing provisions for prorated fields. Except as provided in subsection (h) of this section or as necessary to prevent waste or protect correlative rights, balancing provisions will be applied for wells completed in prorated gas fields.

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

(4) Underproduction.

(A) If during the balancing period a prorated gas well or a limited well does not produce as much gas as is allocated to it by the commission, the operator of the well shall be permitted to carry such underproduction forward to the next succeeding balancing period as future allowable credit to be produced during that period.

(B) The amount of underproduction to be carried forward into any new balancing period as allowed production during such new balancing period shall consist of the actual underproduction that accrued in the balancing period immediately preceding such new balancing period; and the accumulative well status as to underproduction, will be adjusted on each balancing date accordingly. An operator may request that underproduction not balanced during a second balancing period be carried forward to subsequent balancing periods. The operator's request must include evidence of increased market demand that will allow underproduction to be produced in the subsequent balancing period. The request may be granted administratively by the commission or a commission designee if the request was filed no later than the last day of the balancing period following the date the underproduction is canceled, the operator has given at least 21 days notice to all other operators in the field and the first purchaser of gas from the subject well, and no protest

to the request has been filed. The request may also be approved administratively if the operator provides written waivers of objection from all to whom notice would be given as an alternative to notice and absence of protest. If the commission or a commission designee declines to grant administratively the request, the operator may request a hearing.

(5) Overproduction.

(A) (No change.)

(B) A well overproduced as of a balancing date, which was also overproduced on the balancing date immediately preceding and remained overproduced for the entire period between the two balancing dates, shall be shut-in until the overproduction, existent as of the later of such two balancing dates, is made up. Upon request by an operator, the commission may grant authority to produce such a well at a fractional part of its monthly allowable (reduced rate) until its production and allowable are in balance. The commission or a commission designee may determine the permissible rate.

(C) If a protest is received or the commission declines to approve a request to produce at a reduced rate, the operator of a well which under the provisions of subparagraph (B) of this paragraph is required to be shut-in, may request a hearing before the commission to determine whether shutting-in the well would damage it. Notice of the hearing will be given to all operators in the field and the first purchaser of the subject well. If, after consideration of the evidence submitted at the hearing, the commission finds that the well would be damaged if shut-in, the commission may allow the overproduction charged against it to be made up at a lesser rate than it would be made up if the well were shut-in. The commission or a commission designee may determine the permissible rate pending the result of the hearing.

(D) (No change.)

(j) Suspension of allocation formula.

(1) The commission or a commission designee may administratively suspend the allocation formula for a particular gas field if:

(A) each first purchaser from that field has a market for 100% of the deliverability as determined by the deliverability tests available to that purchaser from the field;

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

(2) Suspension of the allocation formula may be initiated by the commission or a commission designee, by one of the operators in the field, or by one of the first purchasers in the field.

(A) The commission or a commission designee will determine which fields are appropriate for suspension utilizing the criteria of paragraph (1) of this subsection. The allocation formula may be suspended administratively by the commission or a commission designee if the applicant has given at least 21 days notice of intent to suspend the allocation formula for a particular field to each of the operators and first purchasers in the field and no protest has been made.

(B) If it is anticipated that suspension of the allocation formula will cause a pipeline limitation in a field, first purchasers in the field for which suspension of the allocation formula is requested shall notify the commission or a commission designee within 21 days of the mailing date of the notice of intent to suspend the allocation formula.

(C) The allocation formula may also be suspended administratively if the applicant provides written waivers of objection from all to whom notice would be given. If the commission or a commission designee declines to suspend administratively the allocation formula, the applicant may request a hearing as provided for in paragraph (4) of this subsection.

(3) Reinstatement of the allocation formula may be initiated by the commission or a commission designee, by one of the operators in the field, or by one of the first purchasers in the field.

(A) If the market demand for gas from a field with a suspended allocation drops below 100% of deliverability as determined by the deliverability tests at any time, the operators and/or first purchasers for the field shall immediately notify the commission or a commission designee and give an explanation of the reduction in demand. The commission or a commission designee will then make a determination of whether the allocation formula should be reinstated and may immediately reinstate the allocation formula.

(B) If a pipeline limitation occurs after suspension of the allocation formula, first purchasers in the field shall immediately notify the commission or a commission designee. The commission or a commission designee will then make a de-

termination of whether the allocation formula should be reinstated and may immediately reinstate the allocation formula.

(C) An operator or first purchaser may request that the allocation formula for a field be reinstated administratively. The request may be approved administratively by the commission or a commission designee if the applicant provides to the commission written waivers of objection from all operators and first purchasers for a field. If the applicant fails to secure all necessary waivers or if the commission or a commission designee declines to approve the request, the operator may request a hearing as provided for in paragraph (4) of this subsection. If the matter is set for hearing, the allocation formula may be reinstated administratively by the commission or a commission designee pending the result of the hearing. The notice of request for reinstatement shall specify the date on which allocation again becomes effective.

(4) If the commission or a commission designee denies administratively a request to suspend or reinstate the allocation formula in a particular field, the applicant may request a hearing. In addition to the criteria set forth in paragraph (1) of this subsection, the commission will consider whether suspension or reinstatement is necessary to prevent waste or protect correlative rights.

(5) (No change.)

(k) Administrative special allowable. A well which has a capability of 100 mcf or less will be assigned an administrative special allowable pursuant to subsection (h) of this section, unless the operator requests otherwise.

### §3.34. Gas to be Produced and Purchased Ratably.

(a) Definitions. The following words and terms, when used in this section and in §3.31 of this title (relating to Gas Well Allowables) (Statewide Rule 31) shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate—A person or entity that owns, is owned by, or is under common ownership with another person or entity to the extent of 50% or more or that otherwise controls or is controlled by another person or entity. Affiliates of a common entity are also affiliates of each other. A person or entity that purchases gas solely for purposes other than resale shall not be considered an affiliate, and an interstate pipeline, as defined in the Natural Gas Policy Act of 1978, §2(15) (15 United States Code §3301 et seq), shall not be considered

an affiliate of an intrastate pipeline.

(2) Commission designee—A Railroad Commission employee authorized to act for the commission. Any authority given to a commission designee is also retained by the commission. Any action taken by the commission designee is subject to review by the commission.

(3) Downstream purchaser—One that purchases natural gas for resale and is not a first purchaser.

(4) First purchaser or initial purchaser—The first purchaser of natural gas produced from a well. A first purchaser and any affiliate of the purchaser that transports any natural gas it purchases from a well by use of the same pipeline system used by the first purchaser of which it is an affiliate shall be treated as a single first purchaser for purposes of ratability requirements; provided, however, that an affiliate that is purchasing and accepting deliveries pursuant to a special marketing program that is in compliance with this section, shall be treated as a separate first purchaser; and, provided further that the designation of such affiliate as a separate first purchaser is reviewable by the commission and may be disallowed upon a showing that the designation was for purposes of circumventing this section. Any affiliate may file forms in its own name.

(5) Pipeline system—A network of physically connected pipelines that are operated as a single unit under normal conditions.

(A) A first purchaser's pipeline system is that portion of a physical segment of a pipeline that the first purchaser owns.

(B) If a first purchaser does not own the pipeline it uses to transport its gas, the first purchaser's pipeline system shall include all the wells from which it purchases that are on the pipeline system of the transport pipeline.

(C) A first purchaser may not segregate its purchases from any one field into two or more pipeline systems by transporting on another pipeline gas that it purchases as a first purchaser if the first purchaser is also purchasing as a first purchaser from the same field and transporting on a pipeline that it owns.

(D) A first purchaser may not segregate its purchases from any one field into two or more pipeline systems by executing gas exchange agreements.

(E) Any of a first purchaser's pipeline systems which serve a common

customer or common customers in a common geographic location shall be operated in a manner to avoid unjust or unreasonable discrimination in takes as between those systems.

(F) A first purchaser shall not segregate its physically connected pipelines that are capable of being operated as a single unit under normal conditions into two or more pipeline systems or designate a gathering system as a separate system for purposes of circumventing this section.

(6) Prorated gas field—A reservoir or field in which an allocation formula is in effect.

(b) General provisions. This section is promulgated to promote and maintain ratable production of natural gas and to require production in compliance with priority categories established by the commission for the purposes of preventing waste, including production in excess of market demand, protecting correlative rights, preventing discrimination, and conserving the natural resources of this state. An operator shall not produce in excess of its ratable share of the market demand as determined by this section and §3.28 and §3.31 of this title (relating to Potential and Deliverability of Gas wells to be Ascertained and Reported and Gas Well Allowables) (Statewide Rules 28 and 31). An operator shall produce ratably as 25 set out in subsection (e) of this section and shall produce in compliance with subsection (i) of this section which establishes priority categories of natural gas. Because production is dictated by pipeline capacity and market demand, pipelines are an integral part of production regulation. The requirements imposed on pipelines by this section and §3.28 and §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported and Gas Well Allowables) (Statewide Rules 28 and 31) are enforced to assist in the regulation of production and provide the only method by which such production regulation can be enforced and market demand met as required by statutory law. A first purchaser shall not discriminate between different wells from which it purchases in the same field, nor shall it discriminate unjustly or unreasonably between separate fields. The provisions of this section requiring ratable production and purchasing of gas apply to purchase and production from wells from which a first purchaser is purchasing on its pipeline system.

(c) Designation of pipeline system. A first purchaser shall, on or before a date designated by the commission or a commission designee, designate its pipeline system(s) and shall identify its affiliates that use the same pipeline system, including an affiliate operating a special marketing pro-

gram that is in compliance with subsection (k) of this section. A pipeline system designation must identify the physical segment of pipeline that constitutes the pipeline system and identify by Railroad Commission of Texas lease and/or identification number and field the wells on that pipeline system from which the first purchaser is purchasing. A change in pipeline system designation is not required to add or delete well connections. The designation of a pipeline system cannot be changed by a first purchaser without prior approval by the commission or a commission designee. Approval of a change in pipeline system designation cannot be given without prior notice of the requested designation given by the first purchaser to affected operators of wells on the system(s) for which a change in designation is sought. A hearing to determine the proper designation of a first purchaser's pipeline system may be called by the commission, or may be requested by a first purchaser or by an operator filing a complaint. The burden of proof in the hearing shall be on the first purchaser.

(d) Operators who use produced gas. Any person who purchases natural gas at the wellhead, at a common point within a field or fields or at the outlet of a processing or treating plant must determine if it is the initial purchase.

(e) Production guidelines. An operator shall produce without discrimination between its wells in the same field on the same first purchaser's pipeline system and without unjust or unreasonable discrimination between its wells in separate fields on the same first purchaser's pipeline system. An operator shall apportion a first purchaser's delivery requests ratably to its wells in each field on the same first purchaser's pipeline system without discrimination in the same manner as provided in this section and §3.28 and §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported and Gas Well Allowables) (Statewide Rules 28 and 31) and shall not produce in excess of its ratable share of the market demand as its share is determined by those rules. An operator shall produce in compliance with the priority categories of gas production established by the commission in subsection (i) of this section.

(f) Purchases from different fields.

(1) In making purchases and accepting deliveries between fields, a first purchaser of natural gas that purchases and accepts delivery of gas from more than one field on its same pipeline system must accept from each field a consistent percentage of the portion of the aggregate deliverability as determined by the deliverability tests and total gas limits that it is entitled to purchase from all wells from which it purchases on its pipeline system, unless the purchaser can demonstrate a just and reasonable basis for discriminating between fields.

(2) Natural gas purchases from a well by a first purchaser that uses another first purchaser's pipeline system to transport its gas and sells the gas purchased on that pipeline system solely to the first purchaser that owns the transport pipeline must be treated as first purchases of gas by the first purchaser that owns the transport pipeline.

(g) Purchases within a field.

(1) In making purchases and accepting deliveries within fields, a first purchaser of natural gas that purchases and accepts delivery of gas from different gas wells in the same priority category (see subsection (i) of this section) in the same field on its same pipeline system shall purchase and accept from the wells from which it purchases in the field a consistent percentage of the portion that it is entitled to purchase of the maximum allowable that a well is entitled to under the field's allocation formula. If purchases and deliveries from different wells in the same field become nonratable, the first purchaser shall consider commission-assigned underproduction and overproduction to establish an appropriate pattern of purchases or acceptance of deliveries to restore ratability.

(2) Natural gas purchases from a well by a first purchaser that uses another first purchaser's pipeline system to transport its gas and sells the gas purchased on that pipeline system solely to the first purchaser that owns the transport pipeline must be treated as first purchases of gas by the first purchaser that owns the transport pipeline.

(3) Purchases and deliveries of casinghead gas shall be based on the well's gas limit (see §3.49 of this title (relating to Gas-Oil Ratio)) (Statewide Rule 49) as provided in subsection (h) of this section. Overproduction and underproduction of gas is administered by the provisions of §3.31 of this title (relating to Gas Well Allowables) (Statewide Rule 31). A first purchaser shall not reduce purchases from a limited well (see §3.31(g)(5) of this title (relating to Gas Well Allowables)) until all prorated gas wells from which it purchases in the field connected to its same pipeline system are ratably reduced to the assigned allowable of the limited well. Below that point, purchases from all prorated wells and limited wells should be reduced ratably by purchasing and accepting delivery of the same percentage of the portion that it is entitled to purchase of the maximum allowable established for the well by the field's allocation formula. If purchases and deliveries from different wells in the same field become nonratable, the first purchaser shall consider commission-assigned underproduction and overproduction in establishing an appropriate pattern of purchases or acceptances of deliveries to restore ratability. When purchases of gas described in subsec-

tion (i)(2) or (5) of this section are to be reduced, they shall be reduced ratably within each priority category.

(h) Casinghead gas reductions. When purchases and deliveries of casinghead gas described in subsection (i)(1) or (3) of this section are to be reduced, each well's share of the reduction shall be calculated by multiplying the total reduction by the fractional share that each well's gas limit bears to the arithmetic sum of the aggregate gas limits of all wells in the field from which the first purchaser has been purchasing on its same pipeline system. In calculating its reduction of a well, a first purchaser shall use that portion of the gas limits that it is entitled to purchase. A well operating under net gas/oil ratio authority shall produce no more gas than its gas limit as it would be reduced by the previously mentioned procedure absent the net gas/oil ratio authority.

(i) Priority categories. First purchasers of gas shall satisfy their pipeline system demand for gas by purchasing and accepting delivery of gas from the following priority categories in ascending numerical order. Lower priority category gas is gas from a higher numerical category. A first purchaser shall not within its pipeline system curtail gas from a priority category if the purchaser is purchasing and accepting delivery of lower priority category gas as a first purchaser on its same pipeline system. A first purchaser's purchases and acceptance of delivery of first, second, or third priority category gas under an obligation to purchase and accept delivery from the tailgate of a plant processing gas to extract liquids, or from a gathering system that purchases from wells and is required by contract or by its physical connections to sell its gas entirely to the purchaser, whether or not these purchases are made as a first purchaser, shall not be curtailed if the first purchaser is purchasing and accepting delivery of lower priority category gas as a first purchaser on its same pipeline system. If curtailed, the curtailment must be ratably with like priority category gas which the first purchaser is purchasing and accepting delivery of from wells on its same pipeline system.

(1) (No change.)

(2) Second priority shall be given to gas from special allowable wells as defined in §3.31(g)(6) of this title (relating to Gas Well Allowables) (Statewide Rule 31) granted special allowable status after the effective date of this section to prevent physical waste. Wells classified as special allowable wells pursuant to notice and hearing prior to the effective date of this section shall be given second priority unless a new determination is made that the special allowable status is not necessary to prevent physical waste.

(3) (No change.)

(4) Fourth priority shall be given to gas from wells classified under §3.49(b) of this title (relating to Gas-Oil Ratio) (Statewide Rule 49(b)), but only to the extent of one full allowable for multiple 49(b) wells.

(5) Fifth priority shall be given to gas from administrative special allowable wells as defined in §3.31(g)(7) of this title (relating to Gas Well Allowables) (Statewide Rule 31), to gas from special allowable wells (see §3.31(g)(6) of this title (relating to Gas Well Allowables)) granted that status prior to the effective date of this section (see paragraph (2) of this subsection) without notice and hearing, and to gas from special allowable wells granted that status by the commission subsequent to the effective date of this section after notice and hearing for other reasons than to prevent physical waste.

(6) Sixth priority shall be given to the remainder of gas well gas, including limited wells (see subsection (g) of this section).

(j) Prohibition against discriminating in favor of purchaser's own production. A first purchaser of natural gas may not discriminate between or against natural gas of a similar kind or quality in favor of its own production or production in which it may be directly or indirectly interested in whole or in part.

(k) Special marketing programs. If a first purchaser elects to qualify an affiliate as a separate first purchaser, the first purchaser may designate the affiliate as a special marketing program. The special marketing program must comply with the following with respect to the purchase and acceptance of delivery of natural gas.

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

(5) The affiliated first purchaser must continue in compliance with this section to purchase and accept delivery from the wells for which the offer was made and not accepted.

(6) With respect to the purchase of gas from those that accept an offer made pursuant to this subsection, the special marketing program purchaser must comply with this section and §3.28 and §3.31 of this title (relating to Potential and Deliverability of Gas Wells To Be Ascertained and Reported and Gas Well Allowables) (Statewide Rules 28 and 31) as a separate first purchaser.

(7) (No change.)

(1) Sellers' complaint procedure. Any operator or nonoperator that is denied by the first purchaser in violation of this section or §3.28 or §3.31 of this title (relating to Potential and Deliverability of

Gas Wells to be Ascertained and Reported and Gas Well Allowables) (Statewide Rules 28 and 31) the opportunity to produce a well's ratably share of gas or opportunity for a well to participate in a special marketing program may file a complaint with the commission and request the commission to direct the first purchaser to end the discriminatory practices. A complainant may request a hearing regarding alleged discriminatory practices or to determine whether a first purchaser is or has, through gas exchange agreements or through actions of its affiliate(s), denied an operator a reasonable opportunity to market its gas.

(m) Purchasers' complaint procedure. If after reasonable notice by the purchaser, an operator fails to comply with a first purchaser's request to reduce production ratably in compliance with this section and §3.28 and §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported and Gas Well Allowables) (Statewide Rules 28 and 31) the purchaser may file a complaint with the commission and request the commission to direct the operator to comply with the purchaser's requests to reduce production ratably. The complainant or the operator may request the commission to take further action, including setting the issue for hearing.

(n) Hardship exceptions. If the operation of this section or §3.28 or §3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported and Gas Well Allowables) (Statewide Rules 28 and 31) causes undue hardship, the commission may, after proper notice and hearing, grant an exception or take appropriate action, including action to prevent waste or protect correlative rights.

(o) Severability provisions. If any provision of this section or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provisions or appreciation, and the provisions of the section are declared to be severable.

### §3.49. Gas-Oil Ratio.

(a) (No change.)

(b) Any gas well producing from the same reservoir in which oil wells are completed and producing shall be allowed to produce daily only that amount of gas which is the volumetric equivalent in reservoir displacement of the gas and oil produced from the oil well in the reservoir that withdraws the maximum amount of gas in the production of its daily oil allowable.

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

(3) The allowable for an associated gas well as determined by this subsection shall be limited to the lesser of:

(c)-(i) (No change.)

(A) the gas well allowable as calculated by paragraph (1) or (2) of this subsection;

(B) the well's capability as determined by §3.31(e) of this title (relating to gas well allowables) (Statewide Rule 31); or

(C) the highest monthly production during those months averaged to a daily amount for wells that reported production during any of the three most recently reported production months.

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

Issued in Austin, Texas on April 28, 1992.

TRD-9205903

Lena Guerrero  
Chairman  
Railroad Commission of  
Texas

Effective date: July 1, 1992

Proposal publication date: February 11, 1992

For further information, please call: (512) 463-6941

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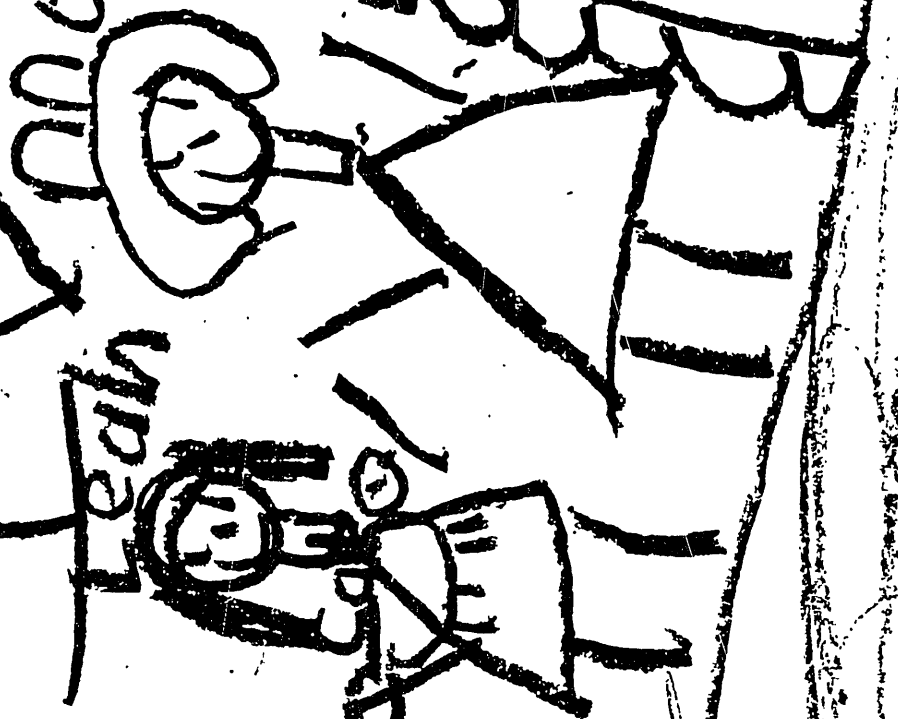
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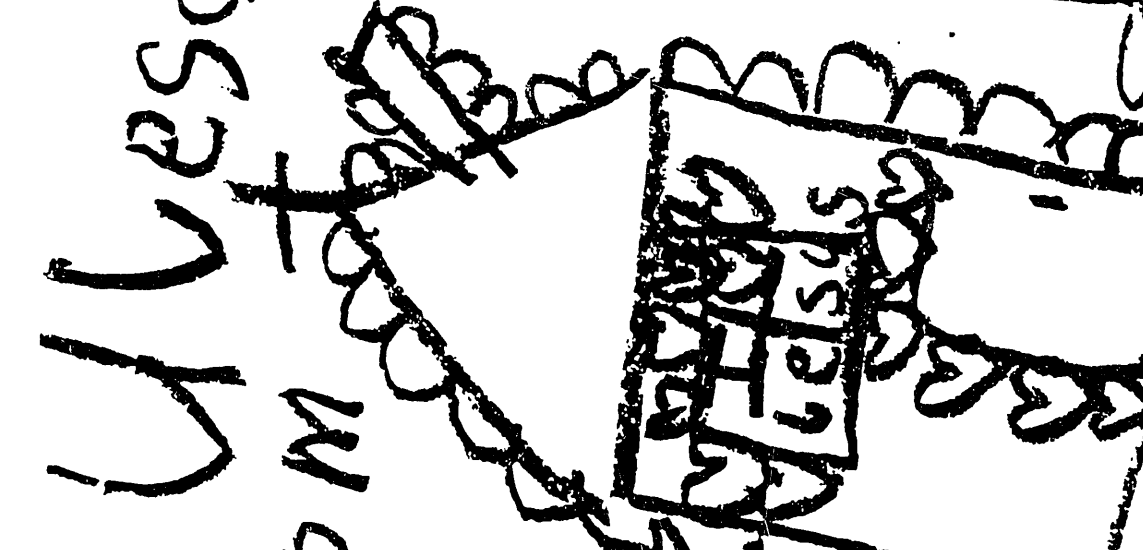
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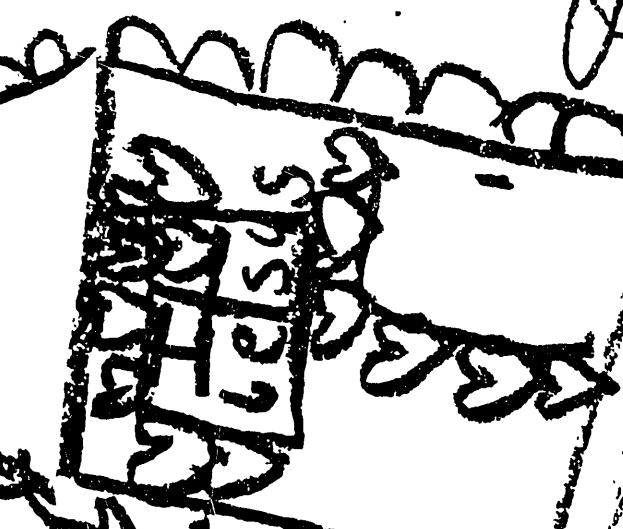
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SARAH GRAVES  
GRADE 1  
BENEFIT CHRISTIAN ACADEMY

## TITLE 22. EXAMINING BOARDS

### Part I. Texas Board of Architectural Examiners

#### Chapter 3. Landscape Architects

##### Subchapter B. Registration

###### • 22 TAC §3.21

The Texas Board of Architectural Examiners adopts an amendment to §3.21, concerning eligibility of applicants for examination, with changes to the proposed text as published in the February 18, 1992, issue of the *Texas Register* (17 TexReg 1377)

This amendment will further clarify the professional degree required of examination applicants by the board. Subsection (b) was added which states: "Full time students enrolled as of April 24, 1992, in nonaccredited programs of study in landscape architecture previously approved by the board will be eligible for admittance to the examination after receiving a degree from that program."

The amendment will provide guidelines for examination applicants with regard to board acceptance of applicant's professional degree.

No comments were received regarding adoption of the amendments.

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

###### §3.21. Eligibility.

(a) An applicant for registration by examination as a landscape architect in Texas shall have received a professional degree from a recognized school whose study of landscape architecture is accredited by the Landscape Architectural Accreditation Board (LAAB) prior to submittal of an application, or shall have had not less than seven years' actual experience in the office of a licensed landscape architect.

(b) Full time students enrolled as of April 24, 1992, in nonaccredited programs of study in landscape architecture previously approved by the board will be eligible for admittance to the examination after receiving a degree from that program.

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 April 24, 1992.

TRD-9205785      Robert H. Norris  
Executive Director  
Texas Board of  
Architectural Examiners

Effective date: May 18, 1992

Proposal publication date: February 18, 1992

For further information, please call: (512) 458-4126

## Part XXI. Texas State Board of Examiners of Psychologists

### Chapter 463. Applications

#### • 22 TAC §463.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §463.5, concerning application file requirements, without changes to the proposed text as published in the March 17, 1992, issue of the *Texas Register* (17 TexReg 1972).

The rule, as amended, will establish criteria for licensure by reciprocity, as required by legislation passed by the 72nd Legislature.

The rule will attach requirements for licensure by reciprocity. Also, the rule will allow psychologists from other states to be considered for licensure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 April 22, 1992.

TRD-9205794      Patricia S. Brizzell Tweedy  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: May 18, 1992

Proposal publication date: March 17, 1992

For further information, please call: (512) 835-2036

### Chapter 465. Rules of Practice

#### • 22 TAC §465.26

The Texas State Board of Examiners of Psychologists adopts an amendment to §465.26, concerning temporary permit to practice, without changes to the proposed text as published in the March 17, 1992, issue of the *Texas Register* (17 TexReg 1972).

To clarify that applicants for a temporary per-

mit must be either applicants for licensure or applicants for licensure by reciprocity.

The public will be able to receive psychological services from a person licensed in another jurisdiction while he/she is applying in Texas. The public benefits because a person can receive services from an experienced professional.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 April 22, 1992.

TRD-9205798      Patricia S. Brizzell Tweedy  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: May 18, 1992

Proposal publication date: March 17, 1992

For further information, please call: (512) 835-2036

## Chapter 471. Renewals

### • 22 TAC §471.1

The Texas State Board of Examiners of Psychologists adopts an amendment to §471.1, concerning notification of renewal, without changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2089).

The rule, as amended, will reflect the requirements of the board's staggered renewal system.

Renewals will be processed more timely because the work load of the board's staff will be distributed more evenly throughout the year. Consequently, the public will receive more current information about the status of a psychologist's license, or psychological associate's certificate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 April 22, 1992.

TRD-9205795 Patricia S. Brizzell Tweedy  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: May 18, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 835-2036

## Chapter 473. Fees

### • 22 TAC §473.1

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.1, concerning application fees, without changes to the proposed text as published in the March 17, 1992, issue of the *Texas Register* (17 TexReg 1974).

The board determined that the cost of a reciprocity applicant is the same as the combined cost of the certification and licensure applicant.

The public will receive information about fee requirements for reciprocity. The application fee for licensure by reciprocity will more realistically reflect processing costs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 April 22, 1992.

TRD-9205797 Patricia S. Brizzell Tweedy  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: May 18, 1992

Proposal publication date: March 17, 1992

For further information, please call: (512) 835-2036

### • 22 TAC §473.6

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.6, concerning reciprocity fee, without changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2089).

The board determined that the cost of a reciprocity applicant is the same as the combined cost of the certification and licensure applicant.

The public will receive information about fee requirements for reciprocity. The application fee for licensure by reciprocity will more realistically reflect processing costs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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 April 22, 1992.

TRD-9205796 Patricia S. Brizzell Tweedy  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: May 18, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 835-2036

## TITLE 28. INSURANCE

### Part II. Texas Workers' Compensation Commission

#### Chapter 110. Required Notices of Coverage

##### Subchapter B. Employer Notices

### • 28 TAC §110.102

The Texas Workers' Compensation Commission adopts an amendment §110.102, concerning employer notices, without changes to the proposed text as published in the February 4, 1992 issue of the *Texas Register* (17 TexReg 930).

This section is adopted as required by Texas Civil Statutes, Articles 8308-3.24(e) and 5.41(c), to clarify what the employer must post in and about the workplace.

Section 110.102 requires the employer to post notices to tell employees whether the employer is covered by workers' compensation insurance and to inform employees about the workers' compensation Ombudsman program.

The only public comment on §110.102 was the following:

Providing the injured worker with the information about the Ombudsman program as re-

quired is more timely than posting it. Also, the posting suggests that the employer may not respond to the needs and concerns of the injured worker and that there may be some cost for help not provided by the Ombudsman. Also, the rule should address self-insured employers as a source for workers' compensation insurance coverage.

The commission disagrees. The posting will provide an opportunity for more people to be made aware of the program and will serve to insure that the injured worker is aware of the assistance available. Emphasizing that the Ombudsman provides free information does not suggest that the employer or others will charge for it. Including self-insured employers before private employers become eligible to participate would confuse the issue unnecessarily. While political subdivisions may become self-insured at this time, they are not subject to the posting notices found in Article 8308-Chapter B, though they are subject to the posting requirement for the Ombudsman program found in Article 8308-5.41(c). This comment, supporting changes to the rule as proposed, was received from the Cypress-Fairbanks Independent School District.

The amendment is adopted under Texas Civil Statutes, Article 8308-3.24(e), which requires the commission to adopt rules prescribing the required notice an employer must post to inform employees of coverage status; Article 8308-5.41(c), which require the commission to prescribe the manner by which an employer must notify employees of the Ombudsman program; and Article 8308-2.09(a), authorizing the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

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

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

TRD-9205755 Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Effective date: June 1, 1992

Proposal publication date: February 4, 1992

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

## Chapter 126. General Provisions Applicable to all Benefits

### • 28 TAC §126.7

The Texas Workers' Compensation Commission adopts an amendment §126.7, concerning the injured employees choice of doctor, with changes to the proposed text as published in the January 21, 1992, issue of the *Texas Register* (17 TexReg 461).

This section is necessary to accomplish the requirements of Article 8308-4.62 and to establish the circumstances under which an em-

employee has made a selection of doctor and to specify when a visit to a doctor does not constitute the employee's choice. One change is in subsection (c) where the text "known as" replaced the proposed text "presumed to be," and the other change is in subsection (f) where the following text was added at the beginning of the subsection: "Except as provided in subsection (e) of this section, ..."

This section requires that the commission provide information to the injured employee regarding his or her right to choose a doctor. It also establishes the fact that initial treatment will usually be by the employee's choice of doctor except for those special circumstances involving the employer's salaried or contract doctors, emergency treatment doctors, or doctors selected by the employer or carrier. Changing doctors is described along with the employee's responsibility to notify the commission when such action is taken.

Public comment regarding this section includes the following.

Comment: the current rule specifies that the first doctor "shall be known as the employee's treating doctor." The proposed amendment changes the language to "shall be presumed to be." TAB objects to changing this to a mere presumption because the first doctor that treats a worker is clearly the worker's choice of doctor, unless exempt as provided by the Act.

Comment: 60 days is too long. The injured employee should be able to decide who he or she wants to have treat them in 30 days. Also, the language of the rule should require the choice be made. Recommend replacing the word "should" with the word "must" in the second sentence and replacing 60 with 30 in the last sentence of subsection (f).

Response: the commission disagrees. 60 days was a compromise agreement between the employer and employee members of the commission and there is no evidence to suggest that this time frame creates an undue hardship on anyone within the system.

Comments were filed by the following in support of change to the rule as proposed: Texas Workers' Compensation Commission Medical Advisory Committee and Texas Association of Business.

The amendment is adopted under Texas Civil Statutes, Article 8308-4.62, which give the injured employee the right to select a doctor, and Article 8308-2.09(a), authorizing the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

#### §126.7. Injured Employee's Choice of Doctor.

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

(c) Except as provided in subsections (d), (e), and (f) of this section, the first doctor, as defined in the Act, §1.03 (17), who provides health care to an injured employee shall be known as the injured employee's initial choice of treating doctor.

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

(f) Except as provided in subsection (e) of this section, the receipt of health care from a doctor selected by the employer or carrier does not, by itself, constitute the injured employee's initial choice of treating doctor. The employee should choose a treating doctor and notify the commission of that choice as soon as possible. However, if this doctor continues to treat the injured employee for a period of 60 days, the doctor is then deemed to be the injured employee's first choice of treating doctor.

(g)-(k)(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 April 27, 1992.

TRD-9205756

Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Effective date: June 1, 1992

Proposal publication date: April 27, 1992

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

## Chapter 133. General Medical Provisions

### Subchapter B. Required Reports

#### • 28 TAC §133.101

The Texas Workers' Compensation Commission adopts an amendment to §133.101, concerning required reports, with changes to the proposed text as published in the January 21, 1992, issue of the *Texas Register* (17 TexReg 462).

This section is necessary to accomplish the requirements of Article 8308-4.66 and to establish the circumstances under which the doctor must file an initial report of treatment. The changes involve inserting "more than" before "one full shift" in subsections (a), (b)(1) and (b)(2).

This section requires that the doctor submit a report only when the worker has lost or will lose time from work. The doctor will be required to determine whether the nature of the injury will require more than one full day or one full shift away from the job.

The only public comment regarding this section was as follows.

Comment: in subsections (a) and (b)(1) and (2) insert the words "more than" before "one full shift" to eliminate a possible ambiguity.

The amendment is adopted under Texas Civil Statutes, Article 8308-4.66(a), which requires the commission to adopt rules to specify the requirements for reports and records to be filed with the commission and Article

8308-2.09(a), authorizing the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

#### §133.101. Initial Medical Report.

(a) The treating doctor shall complete Form TWCC-61, Initial Medical Report, for every occupational disease, and every accidental injury resulting in loss of more than one full day or more than one full shift from work, and submit it to the carrier, the commission, and the injured employee or his/her representative within 10 days of the initial visit.

(b) The treating doctor is not required to complete and submit Form TWCC-61, Initial Medical Report, for an accidental injury if, at the time of the initial visit, the treating doctor:

(1) knows that the injured employee has not lost more than one full day or more than one full shift of work prior to the visit;

(2) does not anticipate that the employee will lose more than one full day or more than one full shift of work after the visit; and

(3) releases the injured worker to return to work with no restrictions.

(c) A treating doctor exempted from the reporting requirement by subsection (b) of this section must complete and submit Form TWCC-61, Initial Medical Report, upon receipt of a request from the carrier, the commission, or the injured worker or representative. Accordingly, the doctor's clinical notes from the initial visit must be adequate for this purpose.

(d) Nothing in this rule relieves a doctor from the requirement of filing Form TWCC-69, Report of Medical Evaluation, as provided by §130.1 of this title (relating to Reports of Medical Evaluation: Maximum Medical Improvement and Permanent Impairment), when certifying maximum medical improvement or assigning an impairment rating.

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 April 27, 1992.

TRD-9205757

Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Effective date: June 1, 1992

Proposal publication date: January 21, 1992

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

## Subchapter E. Compelling Production of Documents

### • 28 TAC §133.401

The Texas Workers' Compensation Commission adopts new §§133.401-133.403. Section 133.402 is adopted with changes to the proposed text as published in the February 4, 1992, issue of the *Texas Register* (17 TexReg 932). Section 133.401 and §133.403 are adopted without changes and will not be republished.

The changes made to the text of §133.402 were limited to the substitution of the word "providing" for the word "producing" in the first sentence of subsection (b), and dropping the phrase "for the convenience of the person served" from the last sentence of subsection (b).

These sections are necessary to establish the mechanism for issuing an order to require production of documents considered by the commission as necessary to meet the information needs of the Medical Review Division and to describe for the public the effects of the order and the possible outcome for failure to comply.

These sections allow the commission to issue an order for the production of documents and require whoever receives the order to produce the documents requested. Use of an order as contemplated by these sections allows the commission to apply penalties and sanctions provided in the Texas Workers' Compensation Act.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 8308-8.21(b) (7), which require the commission to promulgate rules necessary to enable the commission to compel the production of documents, Article 8308-10.21(b)(3), which establishes a penalty for violating an order of the commission, and Article 8308-2.09(a), authorizing the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

#### §133.402. *Delivery of Order; Compliance.*

(a) Service shall be completed by delivery of a copy of the order to the individual named in the order, in person or by certified mail, return receipt requested.

(b) The individual served shall comply with the order on or before the time and date stated in the order by providing the described documents to the designated agency employee. Copies of such documents may be substituted for originals.

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 April 27, 1992

TRD-9205758

Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Effective date: June 1, 1992

Proposal publication date: February 4, 1992

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

## Chapter 134. Guidelines for Medical Services, Charges, and Payments

### Subchapter I. Provider Billing Procedures

#### • 28 TAC §§134.800-134.802

The Texas Workers' Compensation Commission adopts amendments to §§134.800-134.802, concerning health care provider billing. Section 134.801 and §134.802 are adopted with changes to the proposed text as published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7441). Section 134.800 is adopted without changes and will not be republished.

The changes to §134.801 include adding the following to the end of subsection (a): "If the employer is billed, a copy of the bill submitted to the carrier shall state the following in bold type: 'THIS IS ONLY AN INFORMATION COPY, IT IS NOT A REQUEST FOR PAYMENT.'"; removing the words "less than" from the first sentence of subsection (b) and adding "or less" to the end of that sentence; deleting the words "the employer" from the second sentence of subsection (e); and inserting the following sentence after the second sentence of subsection (e): "Upon request the provider shall also submit a copy of the bill, as submitted for payment to the employer, and may charge the employer the fee for copies of reports as described in §133.106(f)(3) of this title (relating to Fair and Reasonable Fees for Required Reports and Records)."

The only change to §134.802 is the addition of the phrase "if not paid in full" to the end of subsection (d)(10).

These sections are necessary to accomplish the requirements of Article 8308-8.21 and to establish when a health care provider is to submit a bill, what information they must include, and the form of their submission.

These sections require that the health care provider submit bills on forms prescribed by the commission and that they include information which the commission will describe in the instructions for the completion of the forms. These sections provide specific controls over what health care providers need to include to notify of "rebillings" and what they have to do when billing an employer for medical services. It should be noted that the "election period" specified in §134.801 continues from the time the health care provider bills the employer until the health care provider requests payment of bills from the insurance

carrier.

Public comments regarding these sections included the following:

Comment: support adoption of §134.800 as published in the December 20, 1991, issue of the *Texas Register*.

Comment: the way §134.801 is set up, it allows providers to deny employers the right to initiate compensation as provided by the Act. The rule should be changed to require employers to comply with the Act and rules regarding promptness, interest, and dispute resolution when they choose to pay provider bills.

Response: the commission disagrees. The Act, §4.68 and §8.01(b), place responsibility for appropriate payment of charges for health care with the insurance carrier and contain no mention of the employer. Section 8.27(a) sets the trigger date for interest at 60 days after the health care provider submits the bill to the insurance carrier. Section 8.26(a) provides that "a party" may request dispute resolution. Employers are not defined as "a party" either in the Act or in commission rules.

Comment: the right to prompt payment and interest on delayed payment should only apply if the provider billed promptly and properly.

Response: the commission disagrees. Providers are entitled to timely payment of bills and they are entitled to interest on late payments as provided in the Act, §8.27. Timely payment of the bill is based on the date it is submitted, not whether it was submitted timely by the provider.

Comment: providers should not have to waive rights in order to allow a willing employer to pay medical benefits. The employer has the right to initiate those payments and the fee guidelines were based on a balance of fair and reasonable against increased security of payment.

Response: the commission disagrees. While it is true that the guidelines set fees based in part on the reasonable expectation of payment, it is also true that the Act did not bind the employer to the same standards as the carrier was bound in the payment of medical bills. It appears health care providers never had the right to prompt payment, interest on delayed payment, and administrative dispute resolution when it comes to payment by an employer, so the act of choosing to bill the employer is the same as electing to waive rights that would have existed by billing the carrier.

Comments in support of these sections were received from the Alliance of American Insurers. Comments in support of changes to the rules as proposed were received from: TUElectric; American Rehabilitation Center; and Care Clinic.

The amendments are adopted under Texas Civil Statutes, Article 8308-8.21(a), which requires the commission to promulgate rules to regulate the provision of medical services and the fees charged for those services and Article 8308 2.09(a), authorizing the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation

Act.

**§134.801. Submitting Bills for Payment: Information Copies.**

(a) Submitting bills for payment. The health care provider shall submit all medical bills to the insurance carrier. The provider may elect to submit bills to an employer who has indicated a willingness to pay them. If the employer is billed, a copy of the bill submitted to the carrier shall state the following in bold type: "THIS IS ONLY AN INFORMATION COPY, IT IS NOT A REQUEST FOR PAYMENT."

(b) Waiver of rights. A provider who elects to submit bills to an employer waives, for the duration of the election period, the rights to:

(1) prompt payment, as provided by the Texas Workers' Compensation Commission Act (the Act), Article 8308-4.68;

(2) interest for delayed payment as provided by the Act, Article 8308-8.27; and

(3) commission-provided medical dispute resolution as provided by the Act, Article 8308-8.26.

(c) Time for submission—health care practitioners. Health care practitioners (as defined in the Act, §1.03(22)) shall submit to the carrier a properly completed bill within 15 days after the initial service or treatment date. Subsequent billing shall be at least monthly for services and treatments rendered.

(d) Time for submission—health care facilities. For inpatient services, health care facilities (as defined in the Act, §1.03(21)) shall submit bills to the insurance carrier within 10 days after discharge, if the confinement is 30 days or less. If the confinement is greater than 30 days, the facilities shall submit an interim bill within 45 days of admission and then at least every 30 days until discharge. The final bill shall be submitted within 10 days of discharge. For outpatient services, bills shall be submitted at least monthly to the insurance carrier.

(e) Providing information copies of bills. Upon request the provider shall send, at no cost, a copy of the bill, as submitted for payment, to the employee, the employee's representative, or the commission. Upon request the provider shall also submit a copy of the bill, as submitted for payment to the employer, and may charge the employer the fee for copies of reports as described in §133.106(f)(3) of this title (relating to Fair and Reasonable Fees for Required Reports and Records). Information copies shall state the following in bold type: "THIS IS ONLY AN INFORMATION COPY, IT IS NOT A REQUEST

FOR PAYMENT."

**§134.802. Insurance Carrier's Submission of Medical Bills to the Commission.**

(a) Within 15 days after final payment of an original bill from a health care provider, or reimbursement to any person who has paid a health care provider's bill, insurance carriers shall submit a copy of the bill with the information described in subsections (c) and (d) of this section to the commission in Austin. Upon written approval by the commission, the insurance carrier may submit the information described in this rule electronically, in a form and format prescribed by the commission.

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

(d) In addition to the information in subsection (c) of this section, the insurance carrier shall include the following information for each service, treatment, or medication charged by the provider:

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

(7) the charge;

(8) the date of reimbursement;

(9) amount paid; and

(10) exception code, if not paid in full.

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 April 27, 1992.

TRD-9205759

Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Effective date: June 1, 1992

Proposal publication date: December 20, 1991

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

**Chapter 152. Attorneys' Fees**

**• 28 TAC §152.3**

The Texas Workers' Compensation Commission adopts an amendment to §152.3, concerning approval of fee by commission, with changes to the proposed text as published in the February 4, 1992, issue of the *Texas Register* (17 TexReg 933).

The change made was in subsection (e) and involved returning the time limit to 14 days rather than five.

This section is necessary to establish the process by which attorneys get commission review and approval of fees subject to Article 8308-4.09 and Article 8308-4.091.

This section requires attorneys to complete a

form and provide specific information about their time and expenses involved in a case.

The only public comments regarding this section stated the following:

Comment: opposed to the change in subsection (e) which reduces carrier's time to comply with a fee order. Five days is unreasonable, burdensome, and would serve no useful purpose.

The amendment is adopted under Texas Civil Statutes, Article 8308-4.09 and 4.091, authorizing the commission to adopt rules regarding payment of attorneys, and Texas Civil Statutes, Article 8308-2.09(a), authorizing the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

**§152.3. Approval of Fee by Commission.**

(a) To claim a fee, an attorney representing any party shall submit written evidence of the attorney's time and expenses on Form TWCC-152, Application and Order for Attorney's Fees.

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

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

(f) Except as provided in subsection (g) of this section, an attorney, claimant, or carrier who contests the fee fixed and approved by the commission shall request a benefit contested case hearing by certified mail, return receipt requested, no later than seven days after the date of the commission's order. The contesting party shall send a copy of the request, by certified mail, return receipt requested, to the carrier and, by regular mail to the other parties, including the claimant. Notice of a contest shall relieve the carrier of the obligation to pay, according to the commission's order, until such time that the commission enters a subsequent order.

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

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 April 27, 1992.

TRD-9205780

Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Effective date: June 1, 1992

Proposal publication date: February 14, 1992

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

## Chapter 160. General Provisions

### • 28 TAC §160.2

The Texas Workers' Compensation Commission adopts new §160.2, without changes to the text as published in the January 21, 1992, issue of the *Texas Register* (17 TexReg 463).

This section is necessary to accomplish the requirements of Article 8308-7.03(b) and to establish that nonsubscribing employers must report injuries to the commission and that the report must be as prescribed by the commission.

This section requires that the nonsubscribing employer keep a record of all injuries and report those that involve occupational disease or loss of more than one day from work. This report will be in the form of a log of injuries and will be required monthly based on the commission form and instructions.

There were a few public comments regarding this section as follows:

Comment: To conform with the requirements for subscribing employers, suggest adding the words "by an employee" after the words "occupational disease" in subsection (a).

Response: Disagree. The requirement for employers reporting occupational diseases as found in the Act, §7.03(b) includes any "occupational disease of which the employer has knowledge."

Comment: The rule should provide that injury information from nonsubscribers be confidential, as it is for subscribers.

Response: Disagree. Government records cannot be made confidential by rule. Public access to information is governed by the Open Records Act. However, Article 8308-7.03 does make the identity of the employee confidential.

Comment: The rule should make it clear that injury information provided by a nonsubscriber is no more an admission that the injury occurred than it is for the subscribers.

Response: Disagree. Article 8308-5.05(b), states that any report submitted under §7.03(b) may not be considered admissions or evidence against the employer or the insurance carrier in any proceeding before the commission or a court. There is no need to restate that statutory provision in this rule.

Comment: Subsection (a) of the rule seems to require a report of each injury at the time of injury, while subsection (c) requires a second report cumulating all injuries on a monthly basis. The rule needs to be clarified to establish whether the commission requires one or two reports.

Response: Disagree. Subsection (b) specifies that the report of injury be on a form pre-

scribed by the commission. The form prescribed by the commission for nonsubscribing employers requires only a cumulative report of injuries.

Comments were received from the following in support of changes to the rule as proposed: Texas Association of Business; Texas Association of Responsible Nonsubscribers (TXANS); and Rollins Burdick Hunter Agency of Texas, Inc.

This section is adopted under Texas Civil Statutes, Article 8308-7.03(b) which requires the commission to promulgate rules and prescribe the form and manner of employer's injury reports and Article 8308-2.09(a), authorizing the commission to adopt rules necessary to implement and enforce the Texas Workers' Compensation Act.

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

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

TRD-9205764

Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Effective date: June 1, 1992

Proposal publication date: January 21, 1992

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part XVII. Texas State Soil and Water Conservation Board

#### Chapter 519. Technical Assistance

##### Subchapter A. Technical Assistance Program

### • 31 TAC §519.8

The Texas State Soil and Water Conservation Board adopts an amendment to §519.8, concerning eligible pay rates, without changes to the proposed text as published in the January 17, 1992, issue of the *Texas Register* (17 TexReg 389).

The amendment establishes eligible pay rates for the Technical Assistance Program.

The amendment sets the maximum hourly pay rate and annual amount that districts may pay for technicians wages or salaries in order to be eligible for reimbursement and procedures for exceptions to the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Chapter 201.020, which provides the Texas State Soil and Water

Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

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

Issued in Temple, Texas on April 24, 1992.

TRD-9205764

Robert G. Buckley  
Executive Director  
Texas State Soil and  
Water Conservation  
Board

Effective date: May 18, 1992

Proposal publication date: January 17, 1992

For further information, please call: (817) 773-2250

## TITLE 34. PUBLIC FINANCE

### Part IV. Employees Retirement System of Texas

#### Chapter 81. Insurance

### • 34 TAC §§81.1, 81.3, 81.5, 81.7, 81.11

The Employees Retirement System of Texas adopts amendments to §§81.1, 81.3, 81.5, 81.7, and 81.11, concerning insurance, without changes to the proposed text as published in the February 21, 1992, issue of the *Texas Register* (17 TexReg 13).

House Bill 2, as passed by the 72nd Legislature, requires the enrollment of employees and retirees of certain institutions of higher education into the Uniform Group Insurance Program beginning September 1, 1992. Senate Bill 1331 amends the minimum number of years to be eligible for service retirement but continues to require a minimum of 10 years' service for a retiree to be eligible for the Uniform Group Insurance Program. The adopted amendments reflect these legislative changes. Senate Bill 1331 provides coverage for grandchildren. Technical corrections were also made to certain sections.

These amendments will allow the ERS to administer the Uniform Group Insurance Program in accordance with the intent of the Texas Legislature. Employees and retirees of applicable institutions of higher education will be defined as employees in the Trustee Rules and eligible for participation. Also, the amendments will clarify the retirees who are eligible to participate in the Uniform Group Insurance Program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Insurance Code, Article 3.50-2, §4, which provides the Employees Retirement System of Texas with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provi-

sions of the Texas Employees Group Insurance Benefits Act.

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

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

TRD-9205858      Charles D. Travis  
                         Executive Director  
                         Employees Retirement  
                         System of Texas

Effective date: May 19, 1992

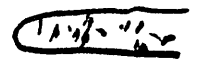
Proposal publication date: February 21, 1992

For further information, please call: (512)  
867-3336

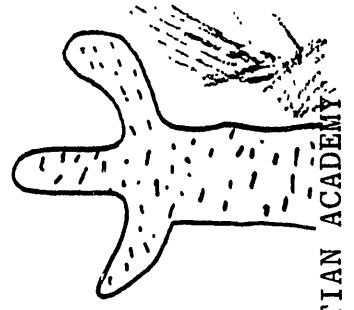
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Jump Truck



PHILIP PITCOCK  
GRADE 3  
BELLAIRE CHRISTIAN ACADEMY



# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

## Texas Department on Aging

**Wednesday, May 13, 1992, 1 p.m.** The Texas Board on Aging's Committee on Funding Formula and Area Agency on Aging Operations of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Small Conference Room, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of the April 8, 1992, minutes; Ombudsman Program proposal discussion; Retired Senior Volunteer Program (RSVP) update; Title III funding formula update and discussion; preliminary information on area agency on aging staffing and indirect costs; carryover policy discussion; and adjourn.

**Contact:** Jose Camacho, 4214 Medical Parkway, Suite 201, Austin, Texas 78717, (512) 454-4583.

**Filed:** April 28, 1992, 3:54 p.m.

TRD-9205879



## Texas Air Control Board

**Thursday, May 7, 1992, 10 a.m.** The Community Involvement Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will give an update on citizen involvement activities.

**Contact:** Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

**Filed:** April 28, 1992, 10:18 a.m.

TRD-9205841

**Thursday, May 7, 1992, 10:30 a.m.** The Enforcement Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will discuss and act on criminal case processing and referral procedures; consider and act on board order

termination clauses; update on task forces: clean air star task force; enforcement penalty and policy task force; and compliance history task force.

**Contact:** Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

**Filed:** April 28, 1992, 10:20 a.m.

TRD-9205842

**Thursday, May 7, 1992, 1 p.m.** The Monitoring and Research Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will report and discuss monitoring needs to support urban airshed modeling; report and discuss the United States Environmental Protection Agency's enhanced ozone monitoring proposed regulations; and report and discussion staff benzene studies.

**Contact:** Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

**Filed:** April 28, 1992, 10:20 a.m.

TRD-9205843

**Thursday, May 7, 1992, 2 p.m.** The Budget and Finance Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will discuss and authorize equipment item purchase over \$10,000 (Nitrogen Dioxide Monitors, Automated Gas Chromatographs, Photocopiers, Scanning Electron Microscope and Continuous PM10 Monitors); consider and act on the development and submittal of the agency's strategic plan; and on the Pantex Monitor installation contract.

**Contact:** Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

**Filed:** April 28, 1992, 10:21 a.m.

TRD-9205844

**Thursday, May 7, 1992, 2:30 p.m.** The Mobile Source Emissions Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will consider and act for: public hearings on proposed revisions to Regulation IV, control of air pollution from motor vehicles, regarding oxygenated fuels and the state implementation plan for carbon monoxide in El Paso County; public hearings on proposed revisions to Regulation IV, control of air pollution from motor vehicles, and the state implementation plan regarding the employer trip reduction program in the Houston/Galveston ozone nonattainment area; and update and action on resolutions to request opt-in to the federal reformulated gasoline program for the Dallas/Fort Worth, Beaumont/Port Arthur, and El Paso nonattainment areas.

**Contact:** Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

**Filed:** April 28, 1992, 10:21 a.m.

TRD-9205845

**Thursday, May 7, 1992, 3:30 p.m.** The Regulation Development Committee of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the complete agenda, the committee will consider and act to adopt proposed revisions to the General Rules and Regulation V, control of air pollution from volatile organic compounds, in response to Federal Clean Air Act Amendment requirements for perimeter nonattainment counties and "leveling the playing field"; consider and act to adopt proposed revisions to the General Rules and Regulation VI, control of air pollution by permits for new construction or modification, in response to Federal Clean Air Act Amendment requirements for new source review rules and definitions; consider and act for public hearings on proposed revisions to Regulation VI regarding compliance history review and operations certifica-

tion; consider and act for public hearings on proposed revisions to Regulation IV, control of air pollution from motor vehicles, regarding oxygenated fuels and the state implementation plan pollution for carbon monoxide in El Paso County; consider and act for public hearings on proposed revisions to Regulation IV and the state implementation plan regarding the employer trip reduction program in the Houston-Galveston ozone nonattainment area.

**Contact:** Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

**Filed:** April 28, 1992, 10:21 a.m.

TRD-9205846

**Friday, May 8, 1992, 8 a.m.** The Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 202S, Austin. According to the agenda summary, the board will call the meeting to order; consider and act on proposals regarding gasoline terminals in East Austin, Travis County; chairman's proposals for rulemaking and other options proposals to develop agreed board orders; hear public testimony; consider and act on: proposed rules; resolutions recommending use of reformulated gasoline; enforcement report; agreed enforcement orders; agreed enforcement order on Pavers Supply Company, Montgomery County; consider and act on: hearing examiner's report; contract with Duke Electric Company, Inc., of Amarillo (Pantex); development and submittal of agency's strategic plan; salary compression and bonus criteria; hear reports; staff report: state implementation plans; consider and act on resolution honoring Steve Spaw; discuss approval of the minutes of April 9 and April 20, 1992 meetings; discuss new business; and adjourn.

**Contact:** Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

**Filed:** April 28, 1992, 10:21 a.m.

TRD-9205847

### Texas Antiquities Committee

**Friday, May 15, 1992, 9:30 a.m.** The Texas Antiquities Committee will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the committee will discuss approval of the minutes of January 17, 1992 meeting; discuss consolidation of Texas Antiquities Committee staff with Texas Historical Commission; designate State Archeological Landmarks (SAL) in Cameron, Dickens, Dimmit, Ft. Bend, Grimes, Hamilton, Harris, Hartley, Hays, Jasper, Jefferson, Johnson, Lamar, Lynn, Mason, Medina, McLennan, Morris,

Shelby, and Webb Counties; discuss the Georgetown Railroad Depot SAL in Williamson County; break into executive session regarding litigation of the Georgetown Railroad Depot; nominate SALs in Travis, Bexar, Wharton, Johnson, and Nueces Counties; discuss an amendment to TAC rules Chapter 45, §45.4; listen to public comments; and listen to staff reports.

**Contact:** Kathleen McLaughlin-Neyland, P.O. Box 12276, Austin, Texas 78711, (512) 463-6098.

**Filed:** April 29, 1992, 8:34 a.m.

TRD-9205884

### Texas Department of Commerce

**Thursday, May 7, 1992, 10 a.m.** The Product Commercialization Advisory Board of the Texas Department of Commerce will meet at 410 East Fifth Street, Room 221, Austin. According to the agenda summary, the board will call the meeting to order; and take action on contingency requests.

**Contact:** Annette Argall, P.O. Box 12728, Austin, Texas 78711, (512) 320-9561.

**Filed:** April 29, 1992, 3:02 p.m.

TRD-9205929

### Daughters of the Republic of Texas, Inc.

**Friday, May 8, 1992, 2:30 p.m.** The Board of Management of the Daughters of the Republic of Texas, Inc. will meet at the Marriott at the Capitol, 701 East 11th, Austin. According to the agenda summary, the board will determine quorum-public session; give invocation; pledge to flags; reports and recommendations for action by committees operating state owned properties; meet in executive session; convene to open meeting, public session to discuss motions arising from executive session; and adjourn.

**Contact:** Betty F. Burr, 613 Bostwick, Nacogdoches, Texas 75961, (409) 564-7478.

**Filed:** April 29, 1992, 10:20 a.m.

TRD-9205915

### Texas State Board of Dental Examiners

**Friday, May 8, 1992, 1:30 p.m.** The Texas State Board of Dental Examiners will meet at the San Antonio Convention Center, Room 108, San Antonio. According to the agenda summary, the board will call the meeting to order; take roll call; discuss ap-

proval of past minutes; approval of settlement orders; modification of board orders for Dr. Susman, Dr. VandeWalle, Dr. Lee, Dr. Ward; board appearances by Dr. James Hill, Dr. George Angelos, Dr. Kenneth Kirk, Dr. Tyree Davis, Mr. Perry Bass; discuss anesthesia committee functions; approval of sedation/anesthesia permits; review of letter and consideration of anesthesia application; discuss proposed Dental Specialty Advisory Committee; appointment of Sunset Advisory Committee; meet in executive session to discuss pending litigation Beck versus TSBDE, Yeary versus TSBDE, Hartsfield versus TSBDE, Tuffiash versus TSBDE, Cryan versus TSBDE, Hernandez versus TSBDE, and Roland versus TSBDE.

**Contact:** C. Thomas Camp, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

**Filed:** April 29, 1992, 4:42 p.m.

TRD-9205948

**Saturday, May 9, 1992, 8 a.m.** The Texas State Board of Dental Examiners will meet at the San Antonio Convention Center, Room 108, San Antonio. According to the agenda summary, the board will discuss for consideration of repeal or amendment of rules §§107.22, 107.25, 107.26, 107.48, 107.51, 107.53, 107.56; proposal for modification of rule §109.175; rules proposed for repeal, adoption or modification, §§105.1, 105.41, 107.1, 107.2, 107.3, 107.55, 109.144, 109.222; hold a public hearing and proposed adoption of rules-dental lasers, §§109.301, 109.302, 109.303, 109.304; reports on AADE and National Dental Examiners meeting; hear executive director's report; committee reports; announcements; and adjourn.

**Contact:** C. Thomas Camp, 327 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 477-2985.

**Filed:** April 29, 1992, 4:43 p.m.

TRD-9205949

### Texas Planning Council for Developmental Disabilities

**Thursday-Friday, May 7-8, 1992, 1 p.m. and 9 a.m.** The Texas Planning Council for Developmental Disabilities will meet at the Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Public Hearing Room, Austin. According to the complete agenda, on Thursday, the council will call the meeting to order; make introductions; discuss approval of minutes; hear public comments; review and discuss planning and evaluation committee report: disability policy consortium funding recommendations; recommendation for funding activities; strategic planning activities update; advocacy

and public information committee report; proposed revised employment position statement; proposed principles regarding health care reform; state and federal policy update; grants presentations; and adjourn. On Friday, the council will hear public comments; comments from John Evans, CIDC, TDH; continuation of unfinished business from Thursday; hear executive committee report; proposed by-laws revisions; stipends RFP recommendation; administrative costs reimbursement; FY 1992 budget adjustments; proposed TPCDD/TRC management agreement; designated agency for the council; hear chairman's report; recommendation for NADDC delegate; UAP update; ADA activity update; Advocacy, Inc. update; executive director's report to discuss financial statements; make announcements; and adjourn.

**Contact:** Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4087.

**Filed:** April 29, 1992, 11:31 a.m.

TRD-9205916

**Friday, May 8, 1992, 12:30 p.m.** The Executive Committee of the Texas Planning Council for Developmental Disabilities will meet at the Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Room 4240, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of March 12-13, 1992 meeting; review stipends grant applications; hear chairman's report; executive director's report; and adjourn. Please call Denese Holman, (512) 483-4087 if there is a need for an interpreter or materials for meeting.

**Contact:** Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

**Filed:** April 30, 1992, 10:01 a.m.

TRD-9205970

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**Texas Education Agency**

**Wednesday, May 6, 1992, 9 a.m.** The State Board of Education Task Force on High School Education of the Texas Education Agency will hold an emergency meeting at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the task force will review charge to the committee; discuss public hearings; process for developing exit outcome goals for public education; task force response to preparatory programs proposal; discuss revised policy statement; and discuss draft sections of task force report. The emergency status is necessary as it is of urgent public necessity for this meeting to be held to ensure that the task force can submit its report and

recommendations to the board at the June meeting.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:48 p.m.

TRD-9205951

**Thursday-Friday, May 7-8, 1992, 8 a.m.** The Advisory Committee for Technology Standards (ACTS) of the Texas Education Agency will meet at the Department of Information Resources, Capitol One Plaza Building, 15th and Lavaca Streets, Austin. According to the complete agenda, on Thursday, the committee will review meeting materials; report on hardware, equipment, and training standards effort; review and refine committee charge and status report; standards writing; and adjourn. On Friday, the committee will distribute information from May 7 meeting; discuss/review in-progress items; assign and understand tasks and break into subcommittees to discuss assigned tasks; review current efforts and set future goals; and adjourn.

**Contact:** Lane Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9719.

**Filed:** April 29, 1992, 4:48 p.m.

TRD-9205950

**Thursday, May 7, 1992, 9:30 a.m.** The State Board of Education Ad Hoc Committee on Textbooks of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, Austin. According to the complete agenda, the committee will discuss proposed amendments to 19 TAC Chapter 67, Subchapter A, State Textbook Program; and discuss selected issues posed by the State Board of Education's Ad Hoc Committee on Textbooks and a proposed schedule for discussion of remaining issues.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:48 p.m.

TRD-9205952

**Thursday, May 7, 1992, 10:30 a.m.** The State Board of Education (SBOE) 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 hear public testimony; commissioner's overview of May 1992 SBOE meeting; discuss assessment rules; Texas Assessment of Academic Skills (TAAS) results; request to reconsider the performance standards on the exit level TAAS; discuss the 1993, 1994, and 1995 academic excellence indicator system; policy statement on middle grade

education and middle grade schools; and meet in executive session to discuss pending litigation (in accordance with Article 6252-17, §2(e), Vernon's Texas Civil Statutes, in Room 1-103).

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:50 p.m.

TRD-9205953

**Thursday, May 7, 1992, 1:30 p.m.** The State Board of Education Committee on School Finance 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 hear public testimony; discuss school finance; school facilities standards; funding for professional staff development projects; evaluation topics for study by Texas Council on Vocational Education (TCVE), 1992-1993; appointment to 1992 State Textbook Subject Area Committee; discuss TCVE evaluation report on distribution process for federal funds; review of adult education special projects and teacher training for 1992-1993; audit report issued by the State Auditor; review of vocational and applied technology education projects to be funded under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:51 p.m.

TRD-9205956

**Friday, May 7, 1992, 1:30 p.m.** The State Board of Education (SBOE) Committee on Students of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, Austin. According to the agenda summary, the committee will hear public testimony; discuss amendments to 19 TAC Chapter 75, Curriculum; core standards and measures for vocational and applied technology education; appointments to SBOE Textbook Proclamation Advisory Committees for 1993 Proclamation; amendment to 1992 Proclamation; Texas Council on Vocational Education (TCVE) evaluation report on distribution process for federal funds; evaluation topics for study by the TCVE, 1992-1993; adult education special projects and teacher training for 1992-1993; discuss proposed new 19 TAC Chapter 101, assessment; collaboration of public and private sectors in the education of students who are deaf; review of vocational and applied technology education projects to be funded under Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

**Contact:** Criss Cloudt, 1701 North Con-

gress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:50 p.m.

TRD-9205954

**Friday, May 7, 1992, 1:30 p.m.** The State Board of Education (SBOE) Committee on Students of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-100, Austin. According to the agenda summary, the committee will hear public testimony; discuss amendments to 19 TAC Chapter 75, Curriculum; core standards and measures for vocational and applied technology education; appointments to SBOE Textbook Proclamation Advisory Committees for 1993 Proclamation; amendment to 1992 Proclamation; Texas Council on Vocational Education (TCVE) evaluation report on distribution process for federal funds; evaluation topics for study by the TCVE, 1992-1993; adult education special projects and teacher training for 1992-1993; discuss proposed new 19 TAC Chapter 101, assessment; collaboration of public and private sectors in the education of students who are deaf; review of vocational and applied technology education projects to be funded under Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:50 p.m.

TRD-9205955

**Friday, May 8, 1992, 8:30 a.m.** The State Board of Education Committee on the Permanent School Fund (PSF) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-109, Austin. According to the agenda summary, the committee will hear public testimony; recommended PSF Investment Program for May and the funds available for the program; review of PSF securities transactions and the investment portfolio; and report of PSF manager.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:51 p.m.

TRD-9205958

**Friday, May 8, 1992, 8:30 a.m.** The State Board of Education Committee on Long-Range Planning 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 hear public testimony; expert session; discuss issues related to professional development and of educators in campus decision-making; report on pilot projects established

by the 71st Legislature; discuss agency strategic plan required under House Bill 2009; discuss funding for Texas Children's Mental Health Plan; development of student outcome goals; members of the SBOE Ad Hoc Committee on student outcome goals will join members of the Committee on Long-Range planning for discussion of the "Development of Student Outcome Goals".

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** April 29, 1992, 4:51 p.m.

TRD-9205957

### Advisory Commission on State Emergency Communications

**Wednesday, May 6, 1992, 10 a.m.** The Executive Committee of the Advisory Commission on State Emergency Communications will meet at the Greater Harris County 9-1-1 Network Offices, 602 Sawyer, Suite 710, Houston. According to the complete agenda, the committee will call the meeting to order; recognize guests; hear public comment (comments allowed after each agenda item or before commission action); discuss 9-1-1 Districts establishing a designated panel to represent interest of all districts with ACSEC Executive Committee; report on survey results of 9-1-1 districts weighted average of the service fees; update on ACSEC five-year funding forecast; discuss funding research or development projects benefiting statewide 9-1-1 efforts; and adjourn and tour 9-1-1 PSAPs.

**Contact:** Glenn Roach, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

**Filed:** April 28, 1992, 1:13 p.m.

TRD-9205854

### Texas Employment Commission

**Tuesday, May 5, 1992, 8:30 a.m.** The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to discuss Administristaff, Inc. versus James Kaster, et al; Total Fire Safety versus Texas Employment Commission; Bernardino Gonzales and Alma Barrera versus James J. Kaster, et al; and Society of Separationists, Inc., et al versus James J. Kaster, et al; actions, if any, resulting from executive session; staff reports; internal procedures of commission appeals; consider

and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 18; and set date of next meeting.

**Contact:** C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

**Filed:** April 27, 1992, 4:07 p.m.

TRD-9205813

### Office of the Governor-Texas Information and Referral Project

**Thursday-Friday, May 7-8, 1992, 9 a.m.** The Health and Human Services Dictionary Workgroup of the Texas Information and Referral Project of the Office of the Governor will meet at the Brown-Healy Building, Room 5501, 4900 Lamar Boulevard, Austin. According to the complete agenda, the workgroup will call the meeting to order; discuss approval of the minutes; overview of new categorization structure for dictionary; update on definitions received from agencies; review/approval of terms which will not be defined; identify terms for which definitions are unduplicated; and on Friday, identify terms for which there are multiple definitions; identify terms which have been defined by interagency groups; begin defining terms; workgroup reports; discussion of workplan; set upcoming meeting dates; and adjourn.

**Contact:** Carol Price, 201 East 14th Street, Austin, Texas 78701, (512) 463-1782.

**Filed:** April 28, 1992, 2:43 p.m.

TRD-9205862

### Statewide Health Coordinating Council

**Thursday, May 7, 1992, 10 a.m.** The Ad Hoc Committee on Health Concerns of the Elderly of the Statewide Health Coordinating Council will meet at the Texas Department of Health, 1100 West 49th Street, Room M-652, Austin. According to the complete agenda, the committee will hear an activity report and discuss and possibly act on work group reports covering: model projects/continuum of care; rural elderly problems; education of patients-rights and information and referral; case management; licensing and quality of care; health insurance costs; and hear announcements and comments.

**Contact:** Robert Smith, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

**Filed:** April 28, 1992, 4:04 p.m.

TRD-9205881

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**Texas Department of Health**

**Wednesday, May 13, 1992, 9 a.m.** The Children's Speech, Hearing and Language Screening Advisory Committee of the Texas Department of Health 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 and orientate new members; discuss approval of minutes of January 16, 1992 meeting; consider and possibly act on: sub-committee reports covering hearing, speech and language; Texas Medical Association's position on screening for speech/language and communication disorders; middle ear disorders and Department services; and issues on strategies to increase hearing screening referral follow-up rates and recommendations for obtaining help for children with hearing disorders in schools and health departments.

**Contact:** Doug Ozias, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7420.

**Filed:** April 28, 1992, 4:04 p.m.

TRD-9205882

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**Texas Department of Insurance**

**Wednesday, May 6, 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 complete agenda, the board will review and discuss pending board orders; personnel; litigation; commissioner's orders; solvency; planning calendar; TDI Strategic Plan for FY 1992-1998; consider final adoption of 28 TAC §§11.101, 11.102, 11.106, 11.107 concerning name reservation procedures for HMOs; consider final adoption of the repeal of 28 TAC §§11.404-11.411 concerning licensing and regulation of HMO agents; consider final adoption of repeal of 28 TAC §11.705 and §11.706 concerning schedule of charges; consider proposed amendment to Texas Basic Manual of Rules; classifications and rates for Workers' Compensation Insurance pertaining to: new classification for retail drug stores and pharmacies; changing Code 8837-charitable and religious organizations to an "a" rated classification; consider proposal for decision concerning petition by United Industries, Inc. for review of an act of the Texas Workers' Compensation Insurance Facility.

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** April 28, 1992, 3:19 p.m.

TRD-9205871

**Friday, May 8, 1992, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of John M. Davis, Waco, and Home State General Agency, Inc., a Texas corporation to acquire the stock of Home State Agency, Inc. which holds the management agreement over MIC County Mutual Insurance Company of Texas, and thereby control of MIC County Mutual Insurance Company of Texas, pursuant to the provisions of Texas Insurance Code, Article 21.49-1 §5; the issuance of a surplus debenture by MIC County Mutual Insurance Company of Texas to Home State General Agency, Inc. in the approximate amount of \$500,000 pursuant to the provisions of Texas Insurance Code, Articles 1.39 and 21.49-1 §4; amendment to the management agreement in the form of a new management contract between MIC County Mutual Insurance Company of Texas and Home State Agency, Inc., pursuant to the provisions of Texas Insurance Code, Article 21.49-1 §4; and a reinsurance agreement between MIC County Mutual Insurance Company of Texas and Motors Insurance Corporation, pursuant to the provisions of Texas Insurance Code, Articles 21.49-1 §4 and 5.75-1.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

**Filed:** April 29, 1992, 5:19 p.m.

TRD-9205962

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**Texas State Library and Archives Commission**

**Tuesday, May 12, 1992, 10 a.m.** The Texas State Library and Archives Commission will meet at the Lorenzo de Zavala Archives and Library Building, Room 314, 1201 Brazos Street, Austin. According to the complete agenda, the commission will discuss approval of the minutes of March 26, 1992 meeting; orientation by program managers; consider agency reorganization plan; consider the Texas State Library and Archives Commission Strategic Plan for the 1992-1996 period; and hear committee reports.

**Contact:** Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460.

**Filed:** April 28, 1992, 1:54 p.m.

TRD-9205856

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**Texas State Board of Medical Examiners**

**Wednesday, April 29, 1992, 11 a.m.** The Executive Committee of the Texas State Board of Medical Examiners held an emergency meeting at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the committee considered the temporary suspension of the license of Michael H. Dennis, M.D., License Number G-0612. The emergency status was necessary as information had come to the attention of the agency and merited prompt consideration. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

**Contact:** Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728.

**Filed:** April 28, 3:27 p.m.

TRD-9205877

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**Texas Council on Offenders with Mental Impairments**

**Wednesday, May 6, 1992, 8:30 a.m.** The Misdemeanor Committee of the Texas Council on Offenders with Mental Impairments will hold an emergency meeting at the TDCJ-Pardons and Paroles Division, 8610 Shoal Creek Boulevard, Austin. According to the complete agenda, the committee will call the meeting to order; make introductions; hear public comments; discuss organizational issues; meeting schedule; and adjourn. The emergency status is necessary due to coordination of participants schedules.

**Contact:** Pat Hamilton, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5406.

**Filed:** April 29, 1992, 11:32 a.m.

TRD-9205917

**Wednesday, May 6, 1992, noon.** The Executive Committee of the Texas Council on Offenders with Mental Impairments will hold an emergency meeting at the Texas Mental and Mental Retardation, 909 West 45th Street, Room 328, Austin. According to the complete agenda, the committee will call the meeting to order; hear public comments; discuss approval of minutes of previous meeting; discuss TDCJ/TXMHMR collaboration, FY 92-93 activities; hear committee reports; executive director's report; discuss duties of executive director; and adjourn. The emergency status is necessary due to coordination of participants schedules.

**Contact:** Pat Hamilton, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5406.

**Filed:** April 28, 1992, 4:17 p.m.

TRD-9205883

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**Texas Board of Licensure  
for Nursing Home Admin-  
istrators**

**Saturday, May 9, 1992, 9 a.m.** The Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Conference Room, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; chairman's welcome; discuss approval of agenda; meet in executive session to consider personnel matters, pursuant to Texas Revised Civil Statutes Annotated, Article 6252-17, §2(g), regarding the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of the agency's executive director and/or to hear complaints or charges against such employee from board members, and/or present and former employees of the agency, and to meet with Assistant Attorneys General to seek legal advice, pursuant to Texas Revised Civil Statutes Annotated, Article 6252-17, §2(e), regarding personnel matters pertaining to the agency's executive director; meet in open session to consider and possibly act on personnel matters relating to the executive director; set next meeting date; and adjourn.

**Contact:** Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

**Filed:** April 28, 1992, 11:27 a.m.

TRD-9205851

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**State Board of Plumbing Ex-  
aminers**

**Monday, May 11, 1992, 9 a.m.** The State Board of Plumbing Examiners will meet at 929 East 45th Street, Austin. According to the complete agenda, the board will take roll call; recognize visitors; discuss approval of minutes of March meeting; hear administrator's report; nominee to the 1993 Governor's Executive Development Program; review financial report; field report; examination report, ADA on master examination; "Training Period" after failure of examination; hardship cases; FY 1993-1994 budget planning report; plumbing inspector continuing education report; report on agency consolidation; strategic plan; fiscal office vacancy; re-organize field services and examination center; and any other topics for discussion that may come before the board.

**Contact:** Mary Lou Lane, 929 East 45th Street, Austin, Texas 78751, (512) 458-2145.

**Filed:** April 28, 1992, 2:40 p.m.

TRD-9205860

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**Texas Public Finance Au-  
thority**

**Tuesday, May 5, 1992, 1:30 p.m. (Re-scheduled from 2:30 p.m.)** The Board of Directors of the Texas Public Finance Authority will hold an emergency meeting at the William P. Clements Building, 300 West 15th Street, Senate Meeting Room One, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of minutes; consider amendment of interim financing procedures for Texas Master Equipment lease purchase program; and adjourn. The emergency status is necessary to address unanticipated issues in structuring the interim financing arrangements relating to the MELPP, and to meet the mandates of the Governor's Office, The LBB, The Comptroller and the provisions of Rider V-144 Appropriations Bill.

**Contact:** Rachael Caron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

**Filed:** April 30, 1992, 9:55 a.m.

TRD-9205969

**Tuesday, May 5, 1992, 2:30 p.m.** The Board of Directors of the Texas Public Finance Authority will hold an emergency meeting at the William P. Clements Building, 300 West 15th Street, Senate Meeting Room One, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of minutes; consider amendment of interim financing procedures for Texas master equipment lease purchase program; and adjourn.

**Contact:** Rachael Caron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

**Filed:** April 29, 1992, 4:55 p.m.

TRD-9205961

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**Public Utility Commission of  
Texas**

**Wednesday, April 29, 1992, 2 p.m.** The Administrative Division of the Public Utility Commission of Texas held an emergency meeting at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission met in an emergency executive session to discuss anticipated litigation regarding PUC Substantive Rule §23.57 Telecommunications Privacy. The emergency status was necessary due to recent developments necessitating possible action before the commission's next regularly scheduled meeting.

**Contact:** Mary Ross McDonald, 7800

Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** April 29, 1992, 8:47 a.m.

TRD-9205887

**Thursday, May 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 commission will hold a prehearing conference in Docket Number 11092-application of Southwestern Bell Telephone Company to revise Section 41 of the general exchange tariff to include two rate elements to provide optional extended calling scope capability for exchange connection service.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** April 28, 1992, 3:20 p.m.

TRD-9205874

**Monday, May 11, 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 commission will hold a prehearing conference in Docket Number 10423-petition of Teleprofits of Texas, Inc. for waiver of PUC Substantive Rule 23.54(d)(4) due to technical limitations of equipment.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** April 28, 1992, 3:20 p.m.

TRD-9205875

**Monday, May 11, 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 commission will hold a prehearing conference in Docket Number 10646-petition of general counsel to inquire into the reasonableness of the rates and services of Contel of Texas, Inc.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** April 29, 2:57 p.m.

TRD-9205928

**Wednesday, June 24, 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 commission will hold a hearing on the merits in Docket Number 10996-application of Big Bend Telephone Company, Inc. for a new local exchange tariff.

**Contact:** Mary Ross McDonald, 7800

Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 29, 1992, 2:55 p.m.

TRD-9205926

**Monday, June 29, 1992, 10 a.m.** The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11074-application of Pedernales Electric Cooperative, Inc. to revise tariff schedules PCA and EIS.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 28, 1992, 3:21 p.m.

TRD-9205876

**Monday, July 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 commission will hold a hearing on the merits in Docket Number 11048-petition of Medina Electric Cooperative, Inc. for reduction of fuel factor and for a partial waiver of Substantive Rule 23. 23(b)(2)(D)(iii).

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 29, 1992, 2:56 p.m.

TRD-9205927

## Texas Senate

**Friday, May 8, 1992, 10 a.m.** The Senate Interim Committee on State Affairs of the Texas Senate will meet at the Committee Room One, One Capitol Square, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; status reports of: General Services Commission; Texas Department of Transportation; Workers' Compensation State Fund; Texas Ethics Commission; Commission on Fire Protection; Office of Administrative Hearings; Automobile Theft Prevention Authority; Office of the Comptroller; take invited testimony and hear public comments concerning the operations of these agencies; and adjourn.

**Contact:** Joe Gagen, P.O. Box 12068, Austin, Texas 78711, (512) 463-0380.

Filed: April 28, 1992, 1:54 p.m.

TRD-9205855

## Teacher Retirement System of Texas

**Tuesday, May 12, 1992, noon.** The Medical Board of the Teacher Retirement System of Texas will meet at 1000 Red River, Room 420E, Austin. According to the complete agenda, the board will discuss the files of members who are currently applying for disability retirement; and the files of disability retirees who are due a re-examination report.

**Contact:** Don Cadenhead, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6400.

Filed: April 30, 1992, 8:43 a.m.

TRD-9205964

## University of Houston System

**Monday, May 4, 1992, 2 p.m.** The Board of Regents of the University of Houston System held a conference call at 1600 Smith, 34th Floor, University of Houston System, Houston. According to the complete agenda, the board discussed and/or approved the following: Honorary Degrees from the University of Houston.

**Contact:** Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: April 29, 1992, 2:43 p.m.

TRD-9205920

## University of Texas Health Center at Tyler

**Thursday, May 7, 1992, 11:30 a.m.** The Animal Research Committee of the University of Texas Health Center at Tyler will meet at the Biomedical Research Building, Room 116, Highways 155 and 271 North, Tyler. According to the complete agenda, the committee will discuss approval of minutes from April 1992 meeting; hear chairman's report-Dr. Peterson; veterinarian's report-Dr. Thedford; discuss old business: review part 4 of animal committee handbook; new business: discuss occupational medicine program; and new protocols/addenda: confirmation of administrative approval of an addendum to raise monoclonal antibodies.

**Contact:** Barry Peterson, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7012.

Filed: April 29, 1992, 4:55 p.m.

TRD-9205960

## University of Texas System

**Wednesday, May 6, 1992, 10 a.m.** The Board for Lease of University Lands of the University of Texas System will meet at the

Midland Hilton Hotel, Ballroom, Midland. According to the revised agenda summary, the board will discuss approval of tracts and opening of bids; approval of minutes; future lease sales; and approval of lease awards to highest bidders.

**Contact:** Linward Shivers, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462.

Filed: April 28, 1992, 2:31 p.m.

TRD-9205859

## Texas Water Commission

**Thursday, May 14, 1992, 1:30 p.m.** The Texas Water Well Drillers Board of 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 board will review and discuss the following license numbers: WWDB-92-7, J. K. Edmonds, Number 74W; WWDB-92-8, James Smith, Number 2837W; and WWDB-92-9, Lewis Dodd, Number 2233W.

**Contact:** Larry Persky, 1700 North Congress Avenue, Austin, Texas 78711-3087, (512) 463-8069.

Filed: April 29, 1992, 3:09 p.m.

TRD-9205932

**Wednesday, June 10, 1992, 9 a.m. (Rescheduled from May 6, 1992).** The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will hold a hearing to consider an application requesting an amendment to an order issued November 30, 1990 approving standby fees for Harris County Municipal Utility District Number 250. The district is requesting an increase in the standby fees to: offset the tax revenues lost due to significant reductions in assessed property valuations; and cover operating budget shortfalls that seriously affect the financial integrity and stability of the district.

**Contact:** Laurie J. Lancaster, P.O. Box 13087, Austin, Texas 78711, (512) 463-8152.

Filed: April 29, 1992, 4:07 p.m.

TRD-9205947

## Texas Youth Commission

**Thursday, May 7, 1992, 8:30 a.m.** The Board of the Texas Youth Commission will meet at the Best Western Harlingen Inn, Palm West Room, Harlingen. According to the agenda summary, the board will discuss approval of the strategic plan; statistical



summary/report on student population; report on the aftercare services; approval of population management proposals; update on General Appropriations Act; and review of alleged mistreatment investigations.

**Contact:** Ron Jackson, P.O. Box 4260, Austin, Texas 78765, (512) 483-5001.

**Filed:** April 29, 1992, 9:28 a.m.

TRD-9205894

## Regional Meetings

### Meetings Filed April 28, 1992

**The Angelina and Neches River Authority** Board of Directors will meet at the Rusk Room, Fredonia Hotel, 200 North Fredonia Street, Nacogdoches, May 5, 1992, at 10 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75901, (409) 632-7795, FAX (409) 632-2564. TRD-9205861.

**The Brazos Higher Education Authority, Inc.** Executive Committee, Board of Directors met at the Brazos Club of Waco, Valley Mills and Waco Drive, Waco, May 1, 1992, at 11:45 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9205848.

**The Brazos Higher Education Service Corporation** Executive Committee, Board of Directors met at the Brazos Club of Waco, Valley Mills and Waco Drive, Waco, May 1, 1992, at 11:55 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9205850.

**The Brazos Higher Education Authority** Executive Committee, Board of Directors met at 2600 Washington Avenue, Waco, May 4, 1992, at 11 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9205863.

**The Brazos Higher Education Authority, Inc.** Executive Committee, Board of Directors met at the Offices of Fulbright and Jaworski, 600 Congress Avenue, Suite 2400, Austin, May 4, 1992, at 1:30 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9205852.

**The Brazos Higher Education Authority, Inc.** Executive Committee, Board of Directors will meet at the Offices of Fulbright and Jaworski, 600 Congress Avenue, Suite 2400, Austin, May 5, 1992, at 11 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9205853.

**The Brazos Higher Education Authority, Inc.** Executive Committee, Board of Directors will meet at 2600 Washington Avenue, Waco, May 5, 1992, at 11 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9205869.

**The Brazos Student Finance Corporation** Executive Committee, Board of Directors met at the Brazos Club of Waco, Valley Mills and Waco Drive, Waco, May 1, 1992, at 11:50 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9205849.

**The Sabine Valley Center** Finance Committee met at the Administration Building, 107 Woodbine Place, Longview, May 4, 1992, at 6 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9205870.

**The Sabine Valley Center** Personnel Committee met at the Administration Building, 107 Woodbine Place, Longview, May 4, 1992, at 6:30 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9205868.

**The Sabine Valley Center** Board of Trustees met at the Administration Building, 107 Woodbine Place, Longview, May 4, 1992, at 7 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9205867.

### Meetings Filed April 29, 1992

**The Aqua Water Supply Corporation** met at the Aqua Office, 305 Eskew, Bastrop, May 4, 1992, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 321-3943. TRD-9205930.

**The Dawson County Central Appraisal District** Board of Directors will meet at 902 North Dallas Avenue, Lamesa, May 6, 1992, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9205898.

**The East Texas Council of Governments** Private Industry Council met at the ETCOG Office, Kilgore, April 30, 1992, at 9:30 a.m. The emergency status was necessary due to a May 1, deadline by the State. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9205931.

**The Education Service Center, Region 17** Board of Directors will meet at 1111 West Loop 289, Board Room, Lubbock, May 6, 1992, at 1 p.m. Information may be ob-

tained from Virgil Ed Flathouse, 1111 West Loop 289, Lubbock, Texas 79416, (806) 793-4802. TRD-9205895.

**The Gulf Coast Quality Work Force Planning Committee** TechForce 2000, Inc. will meet at the Region IV Education Service Center, 7145 Tidwell, Houston, May 5, 1992, at 10 a.m. Information may be obtained from Karen Baird, 250 North Sam Houston Parkway, Houston, Texas 77060, (713) 591-9306. TRD-9205893.

**The 50th Judicial District Juvenile Board** will meet at the District Courtroom, Baylor County Courthouse, Seymour, May 5, 1992, at 11:30 a.m. Information may be obtained from David Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 888-2852. TRD-9205888.

**The Lavaca County Central Appraisal District** Board of Directors will meet at the Lavaca County Central Appraisal District, 113 North Main, Hallettsville, May 11, 1992, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9205892.

**The Tyler County Appraisal District** Board of Directors will meet at 806 West Bluff, Woodville, May 7, 1992, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9205918.

**The Wheeler County Appraisal District** Board of Directors will meet at the District's Office, County Courthouse Square, Wheeler, May 11, 1992, at 7:30 p.m. Information may be obtained from Larry M. Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9205897.

### Meetings Filed April 30, 1992

**The Scurry County Appraisal District** Appraisal Review Board will meet at 2612 College Avenue, Snyder, May 5, 1992, at 8:30 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9205966.

**The UniForce** Quality Work Force Planning Committee will meet at the New Braunfels Smokehouse, Highway 46, New Braunfels, May 5, 1992, at noon. Information may be obtained from Pam Janssen, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 299-2400. TRD-9205968.

**The Upshur County Appraisal District** Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, May 11, 1992, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (903) 843-3041. TRD-9205967.

# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, Title 79, Revised Texas Civil Statutes, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	05/04/92-05/10/92	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	05/01/92-05/31/92	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

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

TRD-9205899 Al Endsley  
Consumer Credit Commissioner

Filed: April 29, 1992

For further information, please call: (512) 479-1280

## Texas Department of Housing and Community Affairs

### Notice of Amendment to 1991 Final Statement

The Texas Department of Housing and Community Affairs (TDHCA) announces an amendment to the State of Texas' federal fiscal year 1991 final statement which governs the expenditure of 1991 Texas Community Development Block Grant funds. The final statement is being amended to alter selection criteria for Texas Capital Fund Infrastructure Program grant awards that exceed the maximum of \$800, 000.

If a unit of local government is applying for a grant to provide infrastructure improvements on behalf of a specific business and that specific business will create or retain jobs where the cost per job is \$10,000 or less, then the maximum grant amount may be increased, but may not exceed \$1,500,000, provided that the Texas Capital Fund grant does not exceed 15% of the total project costs. If a unit of government is applying for a grant to provide infrastructure improvements on behalf of a specific busi-

ness and that specific business will create or retain jobs where the cost per job is \$5,000 or less, then the maximum grant amount may be increased, but may not exceed \$2,500,000, provided that the Texas Capital Fund grant award does not exceed 15% of the total project costs.

A copy of the final statement as amended is available for review at Texas Department of Housing and Community Affairs, Community Development Block Grant Division, Anson Jones Building, 410 East 5th Street, Austin, or Texas Department of Commerce, Office of Business Finance, 816 Congress Avenue, Austin. Written comments concerning this amendment will be accepted through May 15, 1992, and should be submitted to Anne Paddock, Assistant General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941.

Issued in Austin, Texas, on April 29, 1992.

TRD-9205906 Anne O. Paddock  
Assistant General Counsel  
Texas Department of Housing and  
Community Affairs

Filed: April 29, 1992

For further information, please call: (512) 320-9526

## Notice of Amendment to 1992 Final Statement

The Texas Department of Housing and Community Affairs (TDHCA) announces an amendment to the State of Texas' federal fiscal year 1992 final statement which governs the

expenditure of 1992 Texas Community Development Block Grant funds. The final statement is being amended to alter selection criteria for Texas Capital Fund Infrastructure Program grant awards that exceed the maximum of \$800,000.

If a unit of local government is applying for a grant to provide infrastructure improvements on behalf of a specific business and that specific business will create or retain jobs where the cost per job is \$10,000 or less, then the maximum grant amount may be increased, but may not exceed \$1,500,000, provided that the Texas Capital Fund grant does not exceed 15% of the total project costs. If a unit of government is applying for a grant to provide infrastructure improvements on behalf of a specific business and that specific business will create or retain jobs where the cost per job is \$5,000 or less, then the maximum grant amount may be increased, but may not exceed \$2,500,000, provided that the Texas Capital Fund grant award does not exceed 15% of the total project costs.

A copy of the final statement as amended is available for review at Texas Department of Housing and Community Affairs, Community Development Block Grant Division, Anson Jones Building, 410 East 5th Street, Austin, or Texas Department of Commerce, Office of Business Finance, 816 Congress Avenue, Austin. Written comments concerning this amendment will be accepted through May 15, 1992, and should be submitted to Anne Paddock, Assistant General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941.

Issued in Austin, Texas, on April 29, 1992.

TRD-9205905 Anne O. Paddock  
Assistant General Counsel  
Texas Department of Housing and  
Community Affairs

Filed: April 29, 1992

For further information, please call: (512) 320-9526

◆ ◆ ◆  
**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 guaranteed loss payee.

**Geographical Area:** DHS will procure over-the-counter food stamp issuance service in Bexar County, San Antonio.

**Terms of Contract:** The contract will be for one 12-month period. DHS has the option to renew the contract on a non-competitive 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., July 8, 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 April 27, 1992.

TRD-9205753 Nancy Murphy  
Agency Liaison, Policy and Document  
Support  
Texas Department of Human Services

Filed: April 27, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Public Notice**

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-09, Amendment Number 348.

The amendment increases the income limits for pregnant women and infants under age one to 185% of the Federal Poverty Level. The amendment is effective March 1, 1992.

If additional information is needed, please contact Kay Priest, (512) 450-3426.

Issued in Austin, Texas, on April 29, 1992.

TRD-9205885 Nancy Murphy  
Agency Liaison, Policy and Document  
Support  
Texas Department of Human Services

Filed: April 29, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆  
The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-11, Amendment Number 350.

The amendment reflects the obstetric and pediatric practitioner reimbursement rates. The amendment is effective July 1, 1992.

If additional information is needed, please contact Joe

Branton, (512) 338- 6505.

Issued in Austin, Texas, on April 29, 1992.

TRD-9205886 Nancy Murphy  
Agency liaison, Policy and Document  
Support  
Texas Department of Human Services

Filed: April 29, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Request for Proposal**

The Texas Department of Human (TDHS) services announces the issuance of a request for proposal (RFP) for Protective and Emergency Homemaker Services and conjunctive parent training in 10 counties of Region 5.

**Eligibility:** Offerors eligible to submit proposals are public agencies; private, non-profit agency/corporation; private for-profit/agency/corporation/; individual and partnerships; and educational institutions.

**Contract Period and Allocation:** The contract period will be September 1, 1992 through August 31, 1993. The proposed allocation for this period will be \$425,000.

**Contact Person:** For a copy of the RFP package, call or write O.T. Griffin, Jr., Regional Procurement Specialist; 631 106th Street; Arlington, Texas 76011; telephone number (817) 640-5090, Ext. 2071; FAX (817) 695-5860. The RFP package will be available May 5, 1992. An offeror's conference will be held May 13, 1992, at the TDHS office located at 631 106th Street, Arlington, in Conference Room 111 at 10 a.m.

**Closing Date:** Completed proposals must be actually received by 5 p.m. on May 29, 1992, by O.T. Griffin, Jr., Regional Procurement Specialist; Texas Department of Human Services; 631 106th Street; Arlington, Texas 76011.

Issued in Austin, Texas, on April 29, 1992.

TRD-9205890 Nancy Murphy  
Agency liaison, Policy and Document  
Support  
Texas Department of Human Services

Filed: April 29, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**Texas Department of Insurance  
Company Licensing**

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for name change in Texas for Texas EBA, Inc., a domestic third party administrator. The home office is in Dallas, Texas. The proposed new name is Berkley Administrators of Texas, Inc.
2. Application for admission to do business in Texas for California Insurance Company, a foreign fire insurance company. The home office is in San Francisco, California.
3. Application for admission to do business in Texas for Emperion (assumed name for Emperion Corporation), a foreign third party administrator. The home office is in Miami, Florida.

4. Application for admission to do business in Texas for Industrial Insurance Company, a foreign fire insurance company. The home office is in San Francisco, California.

5. Application for admission to do business in Texas for LNC Administrative Services, Corporation, a foreign third party administrator. The home office is in Fort Wayne, Indiana.

6. Application for admission to do business in Texas for Maksin Management Corp., a foreign third party administrator. The home office is in Pennsauken, New Jersey.

7. Application for incorporation in Texas for Memorial Health Network, Inc. , a domestic third party administrator. The home office is in Houston, Texas.

8. Application for name change in Texas for Title Insurance Company of Minnesota, a foreign title insurance company. The home office is in Minneapolis, Minnesota. The proposed new name is Old Republic National Title Insurance.

9. Application for admission to do business in Texas for Partners Administrative Services, Inc., a foreign third party administrator. The home office is in Hartford, Connecticut.

10. Application for admission to do business in Texas for Phoenix Life and Reassurance Company, a foreign life insurance company. The home office is in Hartford, Connecticut.

11. Application for incorporation in Texas for Republic National Life Insurance Company, a domestic life insurance company. The home office is in Houston, Texas.

12. Application for name change in Texas for Inter-American Insurance Company, a foreign life insurance company. The home office is in Dover, Delaware. The proposed new name is Security Continental Insurance Company.

Issued in Austin, Texas, on April 23, 1992.

TRD-9205822 Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of Insurance

Filed: April 27, 1992

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

◆ ◆ ◆  
**Board of Law Examiners  
Rules Governing Admission to the Bar  
of Texas**

The Board of Law Examiners, a judicial agency under the jurisdiction of the Supreme Court of Texas, has proposed that the Court adopt the following revised *Rules Governing Admission to the Bar of Texas*, to replace the prior Rules adopted by the Court in 1989 and amended in 1991. The Supreme Court's rulemaking authority is found in the Texas Government Code, §82.022.

The Supreme Court has determined that, prior to its consideration of adopting such revised rules, the public should be invited to review and comment on the proposed rules during the 30-day period following their publication. Comments concerning these revisions should be addressed to: Rachael Martin, Executive Director, Board of Law Examiners, P.O. Box 13486, Austin, Texas 78711-3486.

PROPOSED REVISED

RULES GOVERNING ADMISSION TO THE BAR OF TEXAS

Rule I

DEFINITIONS AND GENERAL PROVISIONS

(a) Frequently used terms are defined as follows:

(1) "Applicant" shall mean a person who files with the Board any Application or Re-Application to take the Texas Bar Examination, the Short Form Examination, to be admitted without examination, or for Certification as a Foreign Legal Consultant.

(2) "Application" shall mean an application or Re-Application to take the Texas Bar Examination, the Short Form Examination, to be admitted without examination to the Texas Bar, or for Certification as a Foreign Legal Consultant.

(3) "Approved law school" shall mean a law school approved by the American Bar Association.

(4) "Board" shall mean the Board of Law Examiners.

(5) "Chemical dependency" shall mean:

(i) the abuse of alcohol or a controlled substance;

(ii) a pathological use of alcohol or a controlled substance that chronically impairs the Applicant's ability to competently provide legal advice or services; or

(iii) a physiological or physical dependence on alcohol or a controlled substance.

(6) "Controlled substance" shall have the meaning assigned by Section 462.001, Health and Safety Code.

(7) "Declarant" shall mean a person who files with the Board a Declaration of Intention to Study Law.

(8) "Declaration" shall mean a Declaration of Intention to Study Law.

(9) "District Committee" shall mean a District Committee on Admissions.

(10) "Short Form Examination" shall mean the shortened form of the bar examination available for Applicants qualified under Rule XIII.

(11) "State" shall mean any state or territory of the United States, as well as the District of Columbia.

(12) "Supreme Court" shall mean the Supreme Court of Texas.

(13) "Texas Bar Examination" shall mean the full bar examination.

(14) "Treatment" shall have the meaning assigned by Section 462.001, Health and Safety Code.

(15) "Treatment facility" shall have the meaning assigned by Section 462.001, Health and Safety Code.

(b) The terms "admitted," "admitted to the Bar," "admitted to the Texas Bar," "licensed," and "licensed to practice law in Texas" are used interchangeably in these Rules.

(c) If any completed document required to be filed hereunder is placed, along with all required fees, in a postpaid envelope properly addressed to the Board and then deposited in a post office or official depository under the care and custody of the United States Postal Service, such document shall be deemed timely filed if the envelope bears a legible U.S. Postal Service postmark which is

dated on or before the applicable deadline date.

(d) Neither the Board nor any District Committee shall disclose to any third party any information obtained with respect to the character or fitness of any Applicant, Declarant, or probationary licensee, except:

(1) upon written authority of such Applicant or Declarant, or probationary licensee;

(2) in response to a valid subpoena from a court of competent jurisdiction; or

(3) to the Office of the General Counsel of the State Bar of Texas or to the Texas Unauthorized Practice of Law Committee.

RULE II

GENERAL ELIGIBILITY REQUIREMENTS FOR ADMISSION TO THE TEXAS BAR

(a) To be eligible for admission as a licensed attorney in Texas, the Applicant shall:

(1) comply with all applicable requirements of these Rules;

(2) be at least eighteen (18) years of age;

(3) be of present good moral character and fitness;

(4) have completed the law study required under these Rules, unless specifically exempted under the terms of Rule III;

(5) be either a citizen of the United States or an alien lawfully admitted to the United States for permanent residence;

(6) have satisfactorily completed the Texas Bar Examination, unless exempted from the Bar Examination under Rule XIII;

(7) have satisfactorily completed the Multistate Professional Responsibility Examination; and

(8) be willing to take the oath required of attorneys in Texas.

(b) If an Applicant has not satisfied all requirements for admission to the Texas Bar within two years from the date that the Applicant is notified that (s) he has passed all parts of the Texas Bar Examination, the Applicant's examination scores shall be void, provided, however, that the Board may waive this provision for good cause shown.

RULE III

LAW STUDY REQUIREMENT

(a) The law study requirement for eligibility of an Applicant to take the Texas Bar Examination, unless otherwise provided by these Rules, is met by:

(1) graduation with a J.D. degree or its equivalent from an approved law school;

(2) satisfaction of all requirements for graduation from an approved law school with a J.D. degree or its equivalent; or

(3) study of law in an approved law school or schools by satisfying all requirements for graduation with a J.D. degree or its equivalent, except for not more than four semester hours or its equivalent in quarter hours; provided, however, that no person shall be licensed to practice law until graduation or satisfaction of all requirements for graduation, unless specifically excepted hereunder. If an Applicant under this subsection has not graduated with a

J.D. degree or satisfied all requirements for graduation within two years from the date that all parts of the bar examination are satisfactorily completed, the Applicant's examination scores shall be void.

(b) If a law school was an approved law school at the time the Applicant enrolled, the law school shall be deemed an approved law school as to that Applicant for four years thereafter, regardless of its status at the date of the Applicant's graduation. If a law school was an approved law school at the time the Applicant graduated, the Applicant shall be deemed to be a graduate of an approved law school, regardless of the status of the school at the time the Applicant enrolled.

(c) If a person graduated from a law school that was not an approved law school at either the time the person enrolled or at the time the person graduated, the person is not a graduate of an approved law school even if the law school later became or becomes an approved law school.

#### RULE IV

##### GOOD MORAL CHARACTER AND FITNESS REQUIREMENT

(a) No one shall be eligible for admission to the Texas Bar or for certification as a Foreign Legal Consultant until the investigation of such person's moral character and fitness has been completed, and it has been determined by the Board that such individual possesses good moral character and fitness.

(b) Good moral character is a functional assessment of character and fitness of a prospective lawyer. The purpose of requiring an Applicant to possess present good moral character is to exclude from the practice of law those persons possessing character traits that are likely to result in injury to future clients, in the obstruction of the administration of justice, or in a violation of the Code of Professional Responsibility. These character traits usually involve either dishonesty or lack of trustworthiness in carrying out responsibilities. There may be other character traits that are relevant in the admission process, but such traits must have a rational connection with the Applicant's present fitness or capacity to practice law and accordingly must relate to the legitimate interests of Texas in protecting prospective clients and in safeguarding the system of justice within Texas.

(c) Fitness, as used in these Rules, is the assessment of mental and emotional health as it affects the competence of a prospective lawyer. The purpose of requiring an Applicant to possess this fitness is to exclude from the practice of law any person having a mental or emotional illness or condition which would be likely to prevent the person from carrying out duties to clients, courts or the profession. A person may be of good moral character, but may be incapacitated from proper discharge of his or her duties as a lawyer by such illness or condition. The fitness required is a present fitness, and prior mental or emotional illness or conditions are relevant only so far as they indicate the existence of a present lack of fitness.

#### RULE V

##### PROFESSIONAL RESPONSIBILITY EXAMINATION REQUIREMENT

No person, whether an Applicant under Rule IX or under Rule XIII, shall be issued a license to practice law in Texas until such Applicant has furnished to the Board evidence that (s)he has passed the Multistate Professional Responsibility Examination (MPRE) with a scaled score of

85. A passing MPRE score is valid for two years from the date the MPRE is taken.

#### RULE VI

##### DECLARATION OF INTENTION TO STUDY LAW; GENERAL PROVISIONS

(a) Every person who is beginning law study in an approved law school in Texas for the first time (an "entrant") and who intends to apply for admission to the Bar of Texas shall file with the Board a Declaration of Intention to Study Law, on a form promulgated by the Board.

(1) The Declaration shall show:

(A) the history, experience, and educational qualifications of the Declarant;

(B) the approved law school in which the Declarant is or was enrolled;

(C) the Declarant's history as to being formally charged with any violations of law, excluding:

(1) dismissals unrelated to technical defects in the charging instrument;

(2) cases in which the Declarant was found not guilty;

(3) cases involving minor traffic violations;

(4) expunged arrests or convictions;

(5) pardoned offenses;

(6) Class C misdemeanors;

(D) the Declarant's history of mental illness;

(E) the Declarant's history with regard to charges of fraud in any legal proceeding;

(F) the Declarant's involvement in any civil litigation or bankruptcy proceedings;

(G) the Declarant's willingness to take the oath required of attorneys in Texas;

(H) the Declarant's history as to compliance with court orders regarding child support and spousal support;

(I) the Declarant's history regarding re-payment of federally guaranteed student loans;

(J) the Declarant's history regarding the filing of required federal income tax returns and the payment of federal income tax liability;

(K) the Declarant's history regarding payment to the IRS of payroll taxes (s) he collected as an employer of others; and

(L) such other information regarding the Declarant as the Board deems reasonably related to its investigation of the Declarant's moral character and fitness.

(2) The Board may require the Declarant to provide, in addition, such supporting documents relating to the Declarant as the Board deems reasonable.

(3) The Board may also require the Declarant to execute a consent form supplied by the Board, authorizing all persons, firms, officers, corporations, associations, organizations, and institutions to furnish to the Board or any of its authorized representatives, all relevant documents, records, or other information pertaining to the Declarant.

(b) The timely filing deadline for such Declaration, for which no late fees shall be charged, shall be as follows:

Fall entrants, December 1;

Regular Spring entrants, May 1;

Spring entrants at quarter-hour law schools, June 1;

Summer entrants, September 15.

(c) Declarations filed with the Board after the timely filing deadline will be accepted with the payment of applicable late fees as set forth in Rule XVIII, provided that, in the opinion of the Board, there is sufficient time for completion of the investigation on the late-filed Declaration. However, no Declarant shall be eligible to take the Texas Bar Examination, unless the Declaration and required fees are filed by:

For a February examination, the preceding June 1;

For a July examination, the preceding November 1.

The Board may, for good cause shown in writing, approve a waiver of this provision.

(d) Upon receipt of a Declaration, the Board shall note the filing date in its records. Absent a Declarant's written request to retain a Declaration, all Declarations will be destroyed five years after the date of filing if the Declarant has not activated his or her file by applying to take the Texas Bar Examination during that five year period.

(e) The Board shall conduct a complete investigation of the moral character and fitness of the Declarant, including a preliminary investigation before forwarding any Declaration and supporting documentation to any District Committee on Admissions, as provided in Rule VII.

#### RULE VII

##### DISTRICT COMMITTEES ON ADMISSIONS

(a) The District Committee on Admissions in each Bar District in Texas, appointed by the Supreme Court in accordance with applicable law, shall aid the Board in determining the good moral character and fitness of Declarants, to the extent required by the Board.

(b) The Board shall provide to the Chair of each District Committee on Admissions a list of all Declarations filed by the following persons:

(1) each Texas resident whose Declaration indicates that the Declarant's legal residence, prior to entering law school, was in the geographical area encompassed by such district; and

(2) each person who was not a resident of Texas when (s)he entered law school, whose Declaration indicates that the Declarant entered law school in the geographical area encompassed by such district.

(c) Upon written request of the Chair of such District Committee, the Board shall provide a copy of any person's Declaration, together with the information received in the Board's preliminary investigation. Upon receipt of such Declaration and preliminary information, the District Committee may conduct a personal interview of the Declarant. Such personal interview shall be before not less than five (5) members of the District Committee.

(d) The District Committee is authorized to use all reasonable means to satisfy itself that a Declarant possesses the present good moral character and fitness to practice law; provided, however, that in all cases, the District Committee shall treat Declarants uniformly and impartially.

(e) The District Committee, upon completion of its investigation, shall file with the Board, within sixty (60) days of

its receipt of the Declaration and preliminary investigation, a written report, on forms provided by the Board, as to whether, in the opinion of the Committee, such Declarant possesses the good moral character and fitness to be a candidate for admission to the Bar.

(f) The Board may, during the period of the District Committee's inquiry, provide to the Committee additional information and suggestions for further investigation; may direct the District Committees to employ such practices and procedures as the Board may deem appropriate; and may require the Committee to provide to the Board such reports and information with respect to the work of the District Committee as the Board may determine necessary.

#### RULE VIII

##### DETERMINATION OF DECLARANT CHARACTER AND FITNESS

(a) After completing its own investigation and considering the reports, if any, received from the applicable District Committee on Admissions, the Board shall thereupon determine whether, on all the documentation before it at this stage, the Board is satisfied that the Declarant possesses the good moral character and fitness necessary for admission to the Texas Bar and shall advise the Declarant accordingly, no later than the 270th day after the date the Declaration and fees were filed with the Board. If the determination is that the Declarant does not have the requisite good character and fitness, such notice shall include:

(1) a detailed analysis of the results of the investigation; and

(2) an objective list of actions, if any, which the Declarant may take to correct the deficiencies and become qualified for admission to the bar after passing the Texas Bar Examination.

(b) A hearing may be set on any such preliminary negative determination, in accordance with the provisions of Rule XV.

(c) If the Board determines that a Declarant may suffer from chemical dependency, the Board shall direct the Declarant to meet with representatives of the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the State Bar, and may require that the Declarant submit to a treatment facility for evaluation.

(d) If the Board determines that a Declarant does suffer from chemical dependency, the Board shall assist the Declarant in working with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the State Bar in order to address the dependency.

#### RULE IX

##### APPLICATION TO TAKE THE TEXAS BAR EXAMINATION

(a) Each Applicant to take the Texas Bar Examination, whether or not such Applicant was required under Rule VI to file a Declaration, shall file an Application therefor with the Board as follows:

(1) For the February Examination, an Application shall be timely filed if the Board receives the required forms and fees between June 30 and August 30 of the year preceding the examination.

(2) For the July Examination, an Application shall be timely filed if the Board receives the required forms and fees between the preceding November 30 and January 30.

(3) Upon a showing of good cause or to prevent hardship, the Board may permit the Application to be filed later, upon the payment of applicable late fees as set forth in Rule XVIII. Other than as provided in subsection (f) of this Rule or Texas Government Code, Section 82.025, no Applicant shall be eligible to take an examination until such Application has been on file with the Board by the preceding October 30, for the February examination, or by March 30, for the July examination.

(b) The Application shall be made on a form furnished by the Board and calling for information reasonably related to a thorough inquiry into the Applicant's good moral character, fitness, legal education and other qualifications required in these Rules. Applicants who have filed a Declaration required under these Rules shall be required to complete the Application with information relating only to the period since the filing of the Declaration.

(c) The Board may require the filing of a Supplemental Investigation Form if:

(1) an Applicant previously filed a Declaration and did not apply to take the Texas Bar Examination within four (4) years of the filing date of the Declaration;

(2) two years have elapsed since the date the initial Application was filed with the Board;

(3) two years have elapsed since the date a previously required Supplemental Investigation Form was filed with the Board; or

(4) in other situations deemed appropriate by the Board.

(d) The Applicant shall furnish proof satisfactory to the Board of compliance with the law study requirements of Rule III, and no Applicant shall be admitted to the examination until the Board has determined that these requirements have been met, except as may be required by statutory provisions to the contrary.

(e) Upon the filing of an Application, the Board shall note the filing date and shall initiate an investigation of the Applicant. For Applicants who filed a Declaration required under these Rules, the investigation shall cover only the period of time subsequent to the filing of the Declaration, unless other matters relevant to moral character or fitness not previously revealed in such Declaration shall have come to the attention of the Board.

(f) Any Applicant who fails a Texas Bar Examination may take a later examination upon filing a Re-Application and payment of the then required fees by January 15, for the February Examination, and by June 15, for the July Examination, unless another provision of these Rules requires the filing of a Supplemental Investigation Form or National Conference of Bar Examiners investigation Application, in which case the Applicant must comply with the regular Application deadlines.

#### RULE X

##### DETERMINATION OF APPLICANT MORAL CHARACTER AND FITNESS

(a) After completing its investigation on the Application, the Board shall determine whether, on all the documentation before it, the Board is satisfied that the Applicant possesses the requisite good moral character and fitness and shall advise the Applicant accordingly, no later than the 150th day after the date the Application or Re-Application and fees were filed with the Board. If the determination is that the Applicant does not have the requisite acceptable character and fitness, such notice shall

include:

(1) a detailed analysis of the results of the investigation; and

(2) an objective list of actions, if any, which the Declarant may take to correct the deficiencies and become qualified for admission to the bar after passing the bar examination.

(b) If, after investigation, the Board determines:

(1) that an Applicant may suffer from chemical dependency, the Board shall require the Applicant to submit to a treatment facility for evaluation;

(2) that an Applicant suffers from chemical dependency, the Board shall assist the Applicant in working with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the State Bar.

(c) A hearing may be set on any such preliminary negative determination, in accordance with the provisions of Rule XV.

#### RULE XI

##### TEXAS BAR EXAMINATION

(a) The Supreme Court by separate order has established a list of the subjects for the Texas Bar Examination which shall be open to public inspection at all reasonable times.

(b) The Texas Bar Examination shall be given in the following locations and at such other places in the State of Texas as the Board may direct: Austin, Dallas or Fort Worth, Houston, Lubbock, San Antonio, and Waco.

<sup>1</sup> A list of such subjects, established by the Supreme Court as of the time of publication, is included in the Appendix to these Rules. In the event the Court changes such list, the Board will provide a copy of the revised list upon request.

(c) The Texas Bar Examination shall be given two times each year, beginning on the last Wednesday of the months of February and July, unless the Board otherwise directs.

(d) The approved Applicants for an examination are required to be in attendance at the time and place designated by the Board.

(e) The Texas Bar Examination shall last two and one-half days and shall consist of two parts. Part I shall be given on Wednesday and Thursday and shall include all subjects established by the Supreme Court of Texas for Part I.<sup>[sup]</sup> Part II shall be given Friday morning and shall cover only the subjects of Civil Procedure, Criminal Procedure, and Evidence. To pass the examination, the Applicant must pass Part I with a minimum grade of 75 and Part II with a minimum grade of 75.

(f) An Applicant shall be required to sit for both parts of any examination until such time as the Applicant shall pass one part, after which the Applicant may sit for only the failed part. If all parts of the examination are not satisfactorily completed within five years after the taking of the first examination, the Applicant must, if (s)he is eligible to be admitted to a subsequent examination, retake all parts as if (s)he were a new Applicant. The fee for either part taken separately shall be the same as the fee for the entire examination. An Applicant who fails either part of an examination shall be deemed to have failed an examination for the purpose of Rules IX and subsections (i) and (j) of this rule.

(g) An Applicant may take no more than five (5) examinations. However, the Board at its discretion may permit an



Applicant to take additional examinations upon such conditions as the Board may prescribe.

(h) Any Applicant who has failed the examination at least two times may submit a written request, within two weeks of the release of the examination results, for a Formal Review of the Applicant's performance on the immediately preceding examination (excluding the multistate portion). Such Formal Review shall take place in Austin, Texas at such time selected by the Board and shall consist of an individual oral review of such examination papers by the examining members of the Board. Regardless of the number of examinations taken, an Applicant may receive only one Formal Review under the provisions of this paragraph.

(i) Any Applicant who has failed the examination may submit a written request, within thirty (30) days of the release of the examination results, for an Informal Review of the Applicant's \_\_\_\_\_

<sup>1</sup> See the list in the Appendix. performance on his/her failed parts of the immediately preceding examination (excluding the multistate portion). The form of such Informal Review shall be either oral or written, at the discretion of the examining members of the Board. An Applicant may request an Informal Review each time (s)he fails all or part of an examination.

(j) The Board shall keep, for one year from the date of every examination, all failing parts of such examination. The Board shall not be required to keep any passing parts of any examination.

## RULE XII

### EXAMINEES WITH DISABILITIES

(a) The Texas Bar Examination and the Short Form Examination shall be administered to all eligible Applicants in a reasonable manner, while maintaining the integrity of the examination. In each city in which an examination is administered, the Board shall provide facilities that are reasonably accessible and which enable persons having disabilities to take the examination.

(b) Any Applicant who desires special testing accommodations based upon a disability shall submit a written request to the Board on forms designated by the Board with the required Application.

(c) A request for special testing accommodations must be accompanied by written proof evidencing the existence of the disability. Statements from licensed physicians or a professional specialist that specifically set forth the physical, mental or emotional handicap or disability, the treatment rendered, the prognosis, and the relationship between the disability and the inability to take the examination under standard conditions shall be required. The Board may require additional information or evidence from the Applicant. The Applicant will be responsible for the cost of obtaining documented medical evidence and other required information.

(d) After considering the written request of the Applicant and the evidence submitted, the Board shall determine what reasonable special testing accommodations will be granted.

## RULE XIII

### ATTORNEYS FROM OTHER JURISDICTIONS

(a) An attorney holding a valid law license issued by another state shall meet the requirements imposed on any

other Applicant under these rules, unless such attorney qualifies under one of the following exceptions:

(1) Such attorney is eligible for admission without examination, if the attorney:

(A) at the time the Texas law license is issued, is either a United States citizen or an alien lawfully admitted to the United States for permanent residence;

(B) satisfies the Board of his/her good moral character and fitness after furnishing to the Board such evidence as the Board may require, including, but not limited to, a character report, at the Applicant's expense, issued by the National Conference of Bar Examiners;

(C) has been actively and substantially engaged in the lawful practice of law as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the Application; and

(D) has a J.D. degree from an approved law school.

(2) An attorney who does not meet the criteria for admission without examination set out above is eligible for admission after passing the Short Form Examination<sup>[sup]1[sup]</sup>, if the attorney:

(A) at the time the Texas law license is issued, is either a United States citizen or an alien lawfully admitted to the United States for permanent residence;

(B) satisfies the Board of his/her good moral character and fitness after furnishing to the Board such evidence as the Board may require, including, but not limited to, a character report, at the Applicant's expense, issued by the National Conference of Bar Examiners; and

(C) meets one of the following requirements:

<sup>[sup]1[sup]</sup> The Short Form Examination shall cover the areas of Texas substantive law and procedure which the Board may determine advisable. Any applicant who fails the Short For Examination twice shall thereafter be required to pass the Texas Bar Examination as provided in Rule XI.

(i) has a J.D. degree from an approved law school and has been actively and substantially engaged in the lawful practice of law as his/her principal business or occupation for at least three of the last five years immediately preceding the filing of the Application; or

(ii) has a J.D. degree from an unapproved law school and has been actively and substantially engaged in the lawful practice of law as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the Application.

(b) An attorney holding a law license issued by a foreign nation must meet all of the requirements for admission imposed on any other Applicant under these rules. However, the law study requirement is deemed to have been fulfilled, without the attorney holding a J.D. from an approved law school, if such attorney:

(1) has been licensed, for at least seven years, to practice law in the highest court of the foreign nation;

(2) has been actively and substantially engaged in the lawful practice of law in such foreign nation, as his/her principal business or occupation, for at least seven of the last ten years immediately preceding the filing of the Application;

(3) has a law degree from a law school which requires, as a condition of graduation, legal study for a comparable

period of time to that required by an approved law school; and

(4) demonstrates to the Board that the law of such foreign nation is sufficiently comparable to the law of Texas that, in the judgment of the Board, it enables the foreign attorney to become a competent attorney in Texas without additional formal legal education.

(c) An attorney applying under this Rule XIII shall furnish to the Board such proof of his/her active and substantial engagement in the practice of law as his/her principal business as the Board may require.

(1) The phrase "practice of law" shall include:

(A) private practice as a sole practitioner or for a law firm, legal services office, legal clinic, public agency, or similar entity;

(B) practice as an attorney for an individual, a corporation, partnership, trust, or other entity, with the primary duties of furnishing legal counsel and advice, drafting and interpreting legal documents and pleadings, interpreting and giving advice regarding the law, or preparing, trying or presenting cases before courts, departments of government or administrative agencies;

(C) practice as an attorney for local, state, or federal government, with the same primary duties described in the preceding subsection;

(D) employment as a judge, magistrate, referee, or similar official for the local, state, or federal government, provided that such employment is open only to licensed attorneys;

(E) employment as a full-time teacher of law at a law school approved by the American Bar Association;

(F) any combination of the preceding categories.

(2) The requirement of active and substantial engagement in the practice of law as his/her principal business or occupation cannot be satisfied with practice by a non-resident attorney under Rule XIX.

(d) Any attorney applying and qualifying under this Rule XIII is required to take and pass the Multistate Professional Responsibility Examination (MPRE) as required under Rule V.

#### RULE XIV

##### FOREIGN LEGAL CONSULTANTS

(a) A "Foreign Legal Consultant" is a person who:

(1) has been admitted to practice law in a foreign country, and while so admitted, has engaged in the practice of law in that country for a period of not less than five of the seven years immediately preceding the date of Application and has been in good standing as an attorney or counselor at law or the equivalent in that country throughout the period of such admission; and

(2) possesses the good moral character and fitness requisite for admission to the Bar of Texas; and

(3) is an actual resident of Texas; and

(4) is over twenty-six (26) years of age; and

(5) possesses the requisite documentation evidencing compliance with the immigration laws of the United States; and

(6) has been issued a Certificate of Registration as Foreign Legal Consultant, which certificate is in current status; and

(7) is licensed in a foreign country which allows a member of the Bar of Texas an opportunity to render services as a Foreign Legal Consultant under substantially equivalent circumstances as are provided by this Rule.

(b) An Applicant for a Certificate of Registration as a Foreign Legal Consultant shall file an Application with the Board on a form furnished by the Board accompanied by the requisite fee. Such Application shall include, but not be limited to:

(1) a certificate from the authority in such foreign country having final jurisdiction over professional admission and discipline, certifying as to the Applicant's admission to practice and the date thereof and as to his or her good standing as such attorney or counselor at law or the equivalent, together with a duly authenticated English translation of such certificate if it is not in English; and

(2) a letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or intermediate appellate court of such foreign country, together with a duly authenticated English translation of such letter if it is not in English; and

(3) a summary of the law or rules of such foreign country which permits members of the Bar of Texas to establish offices for the giving of legal advice to clients in such foreign country, together with a duly authenticated English translation of such law or rules if it is not in English; and

(4) such other evidence as to the Applicant's educational and professional qualifications, required practice, and good moral character and fitness, as the Board may require, including the furnishing by the Applicant of a report from the National Conference of Bar Examiners; and

(5) documentation in duly authenticated form evidencing that the Applicant is lawfully entitled to reside and be employed in the United States of America pursuant to the immigration laws thereof; and

(6) a duly acknowledged instrument in writing setting forth the Applicant's address of actual residence in the State of Texas and designating an agent for service in Texas upon whom process may be served, with like effect as if served personally upon the Applicant, in any action or proceeding thereafter brought against the Applicant and arising out of or based upon any legal services rendered or offered to be rendered by the Applicant within or to residents of the State of Texas whenever, after due diligence, service cannot be made upon the Applicant at such address or at such new address as filed by a supplemental instrument; and

(7) in such amount as the Board may prescribe, evidence of professional liability insurance or such other proof of financial responsibility as the Board may require, to assure the Applicant's proper professional conduct and responsibility; and

(8) a duly acknowledged statement affirming that the Board will be immediately advised of any law suit brought against the Applicant which arises out of or is based upon any legal services rendered or offered to be rendered by the Applicant within Texas.

(c) The Board shall investigate the qualifications, moral character, and fitness of any Applicant for a certificate, and may require the Applicant to submit any additional proof or information which the Board deems appropriate.

(1) The Applicant shall disclose all past charges of profes-

sional misconduct and shall show that the Applicant has never been disbarred or had their license suspended and that there are no charges of misconduct pending against Applicant, and so far as the Applicant knows none are being threatened.

(2) Upon a showing that strict compliance with the provisions of (b)(1) or (2) of this Rule is impossible or very difficult for reasons beyond the control of the Applicant, the Board may in its discretion, waive or vary the Application of such provisions and permit the Applicant to submit other evidence.

(3) Upon completion of its investigation, if the Board determines that the Applicant possesses all the qualifications set forth in paragraph (a) of this Rule, the Board shall recommend to the Court the issuance of a Certificate of Registration as a Foreign Legal Consultant.

(d) The Certificate of Registration as a Foreign Legal Consultant shall be valid for one year, unless revoked for good cause shown, and may be renewed upon the filing of an annual request, which shall be accompanied by payment of the annual renewal fee and such evidence as the Board shall deem necessary that all requirements for the issuance of an original Certificate continue to be met.

(e) Certified Foreign Legal Consultants shall be subject to control by the Supreme Court of Texas and to censure, suspension, removal or revocation of the Certificate of Registration in accordance with the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct applicable to members of the State Bar of Texas.

(f) Each Applicant, prior to the issuance of the Certificate of Registration, shall execute and file with the Supreme Court of Texas an oath in the form prescribed attesting that the Foreign Legal Consultant will abide by the rules and regulations applicable to such Certified Foreign Legal Consultant.

(g) The following provisions shall govern the fees charged under this Rule:

(1) The fee for filing an original Application for a Certificate of Registration as a Foreign Legal Consultant shall be the sum in United States dollars which is equal to the fee charged by the foreign country in which the Applicant is licensed to members of the Bar of Texas who are applying in that country for registration as foreign legal consultants, but in no event shall such fee be less than \$700.00.

(2) The annual renewal fee shall be the sum in United States dollars which is equal to the annual renewal fee charged by the foreign country in which the Applicant is licensed to members of the Bar of Texas who are registered as foreign legal consultants, but in no event shall such fee be less than \$150.00.

(3) If a National Conference of Bar Examiners' report is required by the Board, such fee shall be paid by the Applicant at the time required by the Board.

(h) A Foreign Legal Consultant may render legal services and give professional legal advice only on the law of the foreign country where the legal consultant is admitted to practice, subject, however, to the limitations that such person shall not:

(1) appear for a person other than himself as attorney in any Court, before any magistrate or other judicial officer, or before any administrative agency in Texas or prepare pleadings or any other papers or issue subpoenas in any

action or proceeding brought in any such Court, before any such magistrate or other judicial officer, or before any such administrative agency; or

(2) prepare any deed, mortgage, assignment, discharge, lease, trust instrument, or any other instrument affecting title to real estate located in the United States; or

(3) prepare:

(A) any will or trust instrument affecting the disposition on death of any property located in the United States; or

(B) any instrument relating to the administration of a decedent's estate in the United States; or

(4) prepare any instrument in respect to the marital relations, rights or duties of a resident of the United States or the custody or care of the children of such a resident; or

(5) otherwise render professional legal services or advice on the law of the State of Texas or of the United States or of any other jurisdiction (domestic or foreign) in which such person is not authorized to practice law (whether rendered incident to the preparation of legal instruments or otherwise); or

(6) in any way hold himself out as an attorney licensed in Texas, as a member of the State Bar of Texas, or as an attorney licensed in any United States jurisdiction; or

(7) use any title other than "Foreign Legal Consultant", or his or her authorized title and/or firm name in the foreign country of his admission to practice, in each case in conjunction with the name of such foreign country.

## RULE XV

### HEARINGS

(a) The Board shall set a time and place for a public hearing on the question of the requisite moral character and fitness of an Applicant or Declarant, under the following circumstances:

(1) When any Applicant or Declarant who is the subject of a preliminary negative character and fitness determination files a written request for such a hearing within thirty (30) days of his or her receipt of the Board's letter containing the notice of such determination; or

(2) When the Board determines that, in the interest of fairness, such a hearing is necessary regardless of whether the Declarant or Applicant files a timely request for hearing.

(b) The Applicant or Declarant shall be given reasonable notice, by registered or certified mail, return receipt requested, of the time and place of the hearing.

(c) An Applicant or Declarant, either before or after receiving notice of a hearing, may agree to waive the hearing, stipulate to the facts regarding good moral character and fitness, and allow the Board to proceed with making a final determination as to the Applicant's moral character and fitness under these Rules. An Applicant may additionally agree to a Probationary License and to any conditions imposed by the Board to protect the public.

(d) At the hearing:

(1) The Board or any opponent of approval of the moral character and fitness of the Applicant or Declarant, shall have the burden of proof and be required to present evidence that the Applicant or Declarant does not have the requisite good moral character or fitness. Upon the admission of such evidence, the burden of proof shall shift to the

Applicant or Declarant to show that the Applicant possesses good moral character and fitness as defined in these Rules. However, in a re-determination hearing on a Probationary License, the burden of proof shall be on the Probationary Licensee to demonstrate that (s)he has complied with the conditions of the Probationary License.

(2) The Applicant or Declarant shall be given the opportunity to be present in person and by attorney, to present evidence, to confront and to cross-examine adverse witnesses, and to present argument to the Board on the issues of law and fact.

(3) Evidence and argument for or against the Declarant or Applicant may be presented by the Board or any other interested party.

(e) In connection with hearings conducted under this Rule, the Board shall have the authority to administer oaths, issue subpoenas, take depositions, and employ court reporters.

(f) After the hearing, in closed deliberations, the Board may:

(1) determine that a Applicant or Declarant has the requisite present good moral character and fitness and, in the case of an Applicant, should be recommended for admission to the Texas Bar;

(2) determine that a Declarant should be granted conditional approval of his or her present good moral character and fitness and be required to meet such conditions as the Board deems appropriate;

(3) determine that an Applicant should be granted conditional approval of his or her present good moral character and fitness and be recommended for a Probationary License subject to the terms of Rule XVI, after meeting all other requirements of these Rules;

(4) determine that a Applicant or Declarant does not possess the requisite present good moral character and fitness required for admission to the Texas Bar; or

(5) defer a decision until such time as the Board has the opportunity to consider further information, evaluations, or documentation as deemed necessary by the Board.

(g) Within a reasonable period of time after the decision is made, the Board shall furnish to the Applicant or Declarant a written order setting forth the decision of the Board. If the decision is adverse, such order shall specify the bases of the Board's determination and shall include an objective list of actions, if any, the Applicant or Declarant may take to become qualified for a license to practice law in Texas. Any such order containing a determination that the Applicant or Declarant suffers from chemical dependency shall include provisions setting out the rights under Section 82.038, Texas Government Code.

(h) If an individual who has been the subject of a Board order containing a negative character and fitness determination thereafter passes all parts of the Texas Bar Examination or the Short Form Examination, as applicable and required under these Rules, and passes the MultiState Professional Responsibility Examination, as required herein, then the individual may petition the Board in writing for a re-determination hearing on the issue of character and fitness, as follows:

(1) No petition for re-determination may be filed earlier than the date specified in the Board's order (or if none, then no earlier than twelve months from the date of the hearing), nor more often than once every twelve months.

(2) Such individual shall have the burden of proof as to rehabilitation and the possession of present good moral character and fitness.

(3) Such individual shall complete and file with the Board a Supplemental Investigation form and pay the requisite fees therefor within thirty (30) days of the filing of the redetermination petition.

(4) This subsection (h) shall not apply to character and fitness re-determinations in Probationary License cases, which are governed under the provisions of Rule XVI.

(i) The following provisions shall govern judicial review of the Board's decisions:

(1) The affected Applicant or Declarant shall institute, in the district courts of Travis County, Texas proceedings for review of such decision within sixty (60) days after the date the written decision is mailed to the Applicant.

(2) The petition for review shall name the Board as defendant and shall be served on the Executive Director of the Board.

(3) After service of such petition, and within the time permitted for filing an answer, the Board shall file with the district court a certified copy of the record of the Board's proceedings.

(4) The review of the Board's decision shall be tried by the court without a jury.

(5) The court shall determine from the certified record on file whether or not the Board's decision is reasonably supported by substantial evidence. The reviewing court may affirm the action complained of or remand the matter to the Board for further proceedings.

(6) Appeals from any final judgment of the court may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the Board.

(j) The Board shall have the authority to adopt such other rules of procedure for hearings, not inconsistent with these Rules, as the Board deems necessary or appropriate to implement these Rules.

#### RULE XVI

#### PROBATIONARY LICENSES

(a) The Board shall have the authority to grant conditional approval of the present good moral character and fitness of an Applicant and to recommend the granting of a Probationary License, after the Applicant meets all other requirements under these rules, in the following circumstances:

(1) when the Board determines that the Applicant suffers from chemical dependency or has been convicted of, or is on probation for, a first offense of driving while intoxicated under Article 67011-1, V.T.C.A.; or

(2) in other circumstances in which, on the record before it, the Board determines that the protection of the public requires the temporary monitoring of the Applicant in question.

(b) The Board shall not have the authority to refuse to recommend the granting of a Probationary License to an Applicant who has passed the applicable bar examination solely because the Applicant suffers from chemical dependency or has been convicted for a first offense for driving while intoxicated under Article 67011-1, V.T.C.A.

(c) In any order recommending the issuance of a Probationary License to practice law, the Board shall specify the conditions of the license, which may include, but are not limited to, the following:

- (1) prohibiting the use of alcohol or controlled substances;
- (2) requiring treatment for chemical dependency;
- (3) requiring the individual to practice law under the supervision of an attorney admitted to the Texas Bar;
- (4) requiring submission to periodic, random drug testing;
- (5) requiring the individual to report periodically to the Board;
- (6) requiring suspension, for any portion of the probationary period, of an activity for which a license to practice law is required;
- (7) requiring the individual to reside continuously in Texas during the period of the Probationary License, unless for good cause shown, the Board waives such requirement; or
- (8) requiring the individual to take specific actions designed to cure or end any deficiencies in his or her moral character and fitness, as determined by the Board.

(c) Probationary Licenses shall expire as follows:

- (1) A Probationary License issued solely because of the Board's determination that the individual suffers from chemical dependency shall expire on the second anniversary of the date on which it is issued, unless temporarily extended hereunder.
- (2) Any other Probationary License shall expire on the date specified by the Board in the Order recommending issuance of the Probationary License, unless temporarily extended hereunder.
- (3) The term of a Probationary License may be temporarily extended, upon the request of the Probationary Licensee, in the event that the normal expiration date falls before the Board has had the opportunity to make a re-determination as provided hereunder.
- (d) A probationary licensee may apply for a renewal of the Probationary License or for a regular license to practice law, by filing a written request therefor, at least sixty (60) days prior to the expiration date of the Probationary License.
- (e) The Board shall require any probationary licensee issued a Probationary License because of a determination of chemical dependency, prior to the re-determination hearing, to submit to an evaluation, at the sole cost of the probationary licensee, by a treatment facility approved by the Board.
- (f) After a hearing held subject to the provisions of Rule XV herein on the re-determination of the character and fitness of a probationary licensee, the Board may:

(1) recommend, upon a finding of the requisite good moral character and fitness, the issuance of a regular license to practice law in Texas; provided, however, that in any case in which a Probationary License was issued on the basis of chemical dependency, the Board shall not recommend the probationary licensee for regular admission until the Board finds that the probationary licensee has successfully completed treatment and has been free from chemical dependency for the preceding two years;

(2) recommend, upon a finding that a condition of the probationary license has been violated:

- (A) extension of the Probationary License, or
- (B) termination or immediate revocation of the Probationary License.

(g) The Board shall initiate and maintain a working relationship with the Lawyers' Assistance Program or similar program of the State Bar of Texas in order to provide for the evaluation and referral to treatment for those persons issued a Probationary license hereunder. The treatment and professional evaluation shall be at the sole expense of the probationary licensee.

#### RULE XVII

#### ISSUANCE OF LICENSE CERTIFICATES AND CANCELLATION OF LICENSE UNLAWFULLY OBTAINED

(a) Upon an Applicant's becoming entitled to a license under these Rules, the Board shall certify such Applicant to the Supreme Court, whose Clerk shall thereupon issue the corresponding license in the form of a written certificate. The license shall be issued only in the name as shown on the Applicant's birth certificate or as changed by the final order of a court of competent jurisdiction or by marriage, except that a given name may be omitted or represented by initial if the Applicant so requests in writing. No license shall be issued using an alias, assumed name, nickname, or abbreviation of a name.

(b) All law licenses are issued upon the condition that the Applicant has faithfully complied with these Rules. If at any time it appears that an Applicant has obtained a license fraudulently or by willful failure to comply with these Rules, after notice and hearing, the Board may recommend to the Supreme Court that such license be withdrawn and cancelled, and the name of the license holder stricken from the roll of attorneys.

#### RULE XVIII

#### FEES

(a) The following provisions shall govern the fees charged by the Board:

#### FEES RELATING TO DECLARATIONS

Declaration Investigation Fee	\$125
Late Filing Fee (filed within 1 year of due date)	75
Increased Late Filing Fee (filed 1 year or later after due date)	150
Fee for Check Returned for Insufficient Funds	25

**FEEES RELATING TO ELIGIBILITY & EXAMINATIONS**

**Texas law student:**

\$ 100      Application & Examination Fee

**Out-of-state law student:**

\$ 100      Application & Examination Fee

125      Investigation Fee

=====

\$ 225      + NCBE fee as required in subsection (b) below

**Attorneys licensed in another state for less than one year:**

\$ 150      Application Fee

100      Examination Fee

125      Investigation Fee

=====

\$ 375      + NCBE fee as required in subsection (b) below

**Attorneys licensed in another state for one year or more (unless a full-time professor in a Texas approved law school OR unless qualified for admission without examination):**

\$ 450      Application Fee

100      Examination Fee

125      Investigation Fee

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\$ 675      + NCBE fee as required in subsection (b) below

**Full-time professor in approved Texas law school, unless qualified for admission without examination:**

\$ 225      Application Fee

100      Examination Fee

125      Investigation Fee

=====

\$ 450      + NCBE fee as required in subsection (b) below

**Attorney qualified for admission without examination under Rule XIII (unless a full-time professor in approved Texas law school):**

\$ 450      Application Fee

125      Investigation Fee

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\$ 575      + NCBE fee as required in subsection (b) below

Full-time professor in approved Texas law school,  
qualified for admission without examination:

\$ 225      Application Fee  
125      Investigation Fee

=====

\$ 350      + NCBE fee as required in subsection (b)  
below

Foreign attorney:

\$ 450      Application Fee  
100      Examination Fee  
125      Investigation Fee

=====

675      + NCBE fee as required in subsection (b)  
below

Foreign Legal Consultant:

\$ 700      + NCBE fee as required in subsection (b)  
below

Foreign Legal Consultant Re-Application Fee:

\$ 150      + NCBE fee as required in subsection (b)  
below every second renewal year

Supplemental Investigation Fee (as required under Rule IX):

\$ 125

Miscellaneous Fees:

Late Application & Examination Fee: \$50

Re-Application Fee: \$100

Fee for Check Returned for Insufficient Funds: \$25

[graphic]

(b) In addition to the fees outlined above, each Applicant who is not required to file a Declaration under these Rules is required to deliver to the Board, as part of the fees required hereunder, a cashier's check or money order, payable to the National Conference of Bar Examiners, in such amount as is set by the Conference for a character and background report, along with a completed Application as required by the National Conference of Bar Examiners for such character and background report. The Board will transmit the check and the Application to the National Conference of Bar Examiners.

(c) No refund of fees will be made in the event of the withdrawal of any Declaration or Application, nor in the event a determination is made by the Board that the Applicant or Declarant does not meet the requirements imposed under these Rules.

(d) Any fee required under these Rules may be waived or lowered by the Board upon written request and proof of indigency.

#### RULE XIX

##### REQUIREMENTS FOR PARTICIPATION IN TEXAS PROCEEDINGS BY A NON-RESIDENT ATTORNEY

(a) A reputable attorney, licensed in another state but not in Texas, who resides outside of Texas may seek permission to participate in the proceedings of any particular cause in a Texas court by filing with the applicable court a written, sworn motion requesting permission to participate. The motion shall contain:

(1) the office address, telephone number, and, if available, the telecopier number of the non-resident attorney movant;

(2) the name and State Bar card number of an attorney licensed in Texas, with whom the non-resident attorney will be associated in the Texas proceedings, and that attorney's office address, telephone number, and, if available, telecopier number;

(3) a list of all cases and causes, including cause number and caption, in Texas courts in which the non-resident attorney has appeared or sought leave to appear or participate in within the past two years;

(4) a list of jurisdictions in which the non-resident attorney is licensed, including federal courts, and a statement that the non-resident attorney is or is not an active member in good standing in each of those jurisdictions;

(5) a statement that the non-resident attorney has or has not been the subject of disciplinary action by the Bar or courts of any jurisdiction in which the attorney is licensed within the preceding five (5) years, and a description of any such disciplinary actions;

(6) a statement that the non-resident attorney has or has not been denied admission to the courts of any State or to any federal court during the preceding five (5) years;

(7) a statement that the non-resident attorney is familiar with the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct governing the conduct of members of the State Bar of Texas, and will at all times abide by and comply with the same so long as such Texas proceeding is pending and said Applicant has not withdrawn as counsel therein.

(b) The motion of the non-resident attorney seeking permission to participate in Texas proceedings shall be accompanied by motion of the resident practicing Texas attorney with whom the non-resident attorney shall be associated in the proceeding of a particular cause, which motion shall contain a statement that the resident attorney finds the Applicant to be a reputable attorney and recommends that the Applicant be granted permission to participate in the particular proceeding before the court.

(c) The court may examine the non-resident attorney to determine that the non-resident attorney is aware of and will observe the ethical standards required of attorneys licensed in Texas and to determine whether the non-resident attorney is appearing in courts in Texas on a frequent basis. If the court determines that the non-resident attorney is not a reputable attorney who will observe the ethical standards required of Texas attorneys, that the non-resident attorney has been appearing in courts in Texas on a frequent basis, that the non-resident attorney has been engaging in the unauthorized practice of law in the state of Texas, or that other good cause exists, the court or hearing officer may deny the motion.

(d) If, after being granted permission to participate in the proceedings of any particular cause in Texas, the non-resident attorney engages in professional misconduct as that term is defined by the State Bar Act, the State Bar Rules, or the Texas Disciplinary Rules of Professional Conduct, the court may revoke such non-resident attorney's permission to participate in the Texas proceedings and may cite the non-resident attorney as for contempt. In addition, the court may refer the matter to the Grievance



Committee of the Bar District wherein the court is located for such action by the Committee as it deems necessary and desirable.

(e) The filing of a motion under this Rule shall constitute submission to the jurisdiction of the Grievance Committee for the District wherein the court is located. The county in which the court is located shall be considered the county of residence of said non-resident attorney for purpose of determining venue in any disciplinary action involving said attorney.

#### RULE XX

#### ORGANIZATIONAL AND MISCELLANEOUS POWERS OF THE BOARD

(a) Upon completion of the tabulation of grades given on an examination and approval of such tabulation by the Chairman, the grades shall be mailed to the examinees at the addresses given on their Applications. The Deans of the Law Schools in the State of Texas shall be furnished a list of the candidates passing the Bar examination after release of results to the individual candidates. Prior to mailing grades to examinees, no grades shall be given by the Board by telephone to any person nor shall any Board member or employee of the Board give grades in person to an examinee or anyone inquiring on behalf of an examinee.

(b) Unless the Court designates the member of the Board who shall serve as Chairman, the Board shall have authority to select a Chairman. The Board shall select other officers from its own membership, assign their respective duties, may delegate power and authority to one or more of its members, and shall have authority to formulate the procedure of the Board.

(c) The Board shall keep and maintain its files on Declarants and Applicants until such time as their destruction is authorized, as follows:

(1) Files in which a regular license has been issued shall be destroyed five (5) years from the date the license was issued.

(2) Files in which a Probationary License has been issued but no Regular License has been issued shall be destroyed ten (10) years from the date of the last formal activity on the file (i.e., petition for re-determination, hearing, order, expiration of last term of probationary license, issuance of regular license following re-determination hearing, etc.).

(3) Files in which a Declaration, but not an Application, has been filed shall be destroyed five (5) years from the date the Declaration was filed.

(4) Files in which an Application has been filed, but no regular or Probationary License issued, shall be destroyed five (5) years from the date of the last formal activity on the file (i.e., re-Application, examination, hearing, petition for re-determination, etc.), after inputting into the Board's computer data base pertinent and necessary data contained therein.

(d) Insofar as may be consistent with these Rules, the Board is authorized to make all reasonable regulations, including written interpretations of general Application with respect to these Rules or provisions of general Application for relevant subjects not covered by these Rules. The Board may also prescribe forms and certificates to be executed by Applicants for admission to the Texas Bar, whether for a first license to practice law or as a practicing attorney of another jurisdiction, or certificates or other

forms to be executed by or on behalf of the Board itself.

(e) The Board is given discretion in the interpretation and Application of these Rules. For good cause shown to the satisfaction of the Board, upon written request, waivers of specific requirements described in these Rules may be granted, unless it appears therefrom that no exceptions are contemplated by the Supreme Court.

(f) The Board may, in conjunction with its investigation of moral character and fitness or the administration of the bar examination, require Declarants and Applicants to furnish a complete set of fingerprints.

(g) The Board may delegate its duties to a panel of the Board or to the staff, as necessary and where not prohibited by law; provided, however, that the Board shall not delegate to staff its authority to make final determinations that an Applicant or Declarant lacks the requisite good moral character and fitness.

(h) The Supreme Court hereby creates the Board of Law Examiners Fund which shall be comprised of all fees and monies received and interest earned by the Board and shall be used by the Board to administer the functions of the Supreme Court and the Board relating to the licensing of lawyers as directed by the Court. The Fund shall be maintained in one or more financial institutions in Texas, as designated by the Board.

(i) Expenses incurred by the Board including the acquiring and maintaining of its office, staff, supplies, furniture and equipment, and expenses incurred by the Board members and staff, shall be allocated among the Board's functions in accordance with sound accounting principles based upon the percentage of expense attributable to each function. Expenses of investigating moral character include those incurred in connection with the review and processing of National Conference reports, Declarations, and Applications insofar as such review and processing relate to such investigation. Expenses of holding the Examination include those incurred in connection with determining eligibility for reasons other than character and fitness and the preparation, obtaining, administration and grading of the examination. Expenses of determining eligibility for the purpose of the preceding sentence include those incurred in connection with the review and processing of National Conference reports, Declarations and Applications insofar as such review and processing relate to eligibility other than on the basis of character and fitness. The Board shall have full power to contract in performance of all of its functions and any person dealing or contracting with the Board shall be conclusively entitled to rely upon the Board's written determination that the expense thus incurred or contracted is for a proper function of the Board.

(j) The disbursement of funds shall be according to such rules, regulations and budgets as the Board may adopt. The Board shall keep a full record of such receipts and disbursements.

**APPENDIX**

**TEXAS BAR EXAMINATION SUBJECTS**

**PART I**

**MULTISTATE SUBJECTS**

1. Constitutional Law
2. Contracts
3. Criminal Law
4. Evidence
5. Real Property
6. Torts

**ESSAY SUBJECTS**

7. Oil & Gas
8. Uniform Commercial Code
9. Business Associations (including corporations, agency and partnerships)
10. Family Law
11. Trusts (including resulting and constructive trusts)
12. Wills & Administration

**PART II**

1. Civil Procedure (including Federal and Texas court jurisdiction, pleading and practice)
2. Criminal Procedure
3. Evidence

Issued in Austin, Texas, on April 29, 1992.

TRD-9205891 Rachael Martin  
Executive Director

Board of Law Examiners

Filed: April 29, 1992

For further information, please call: (512) 463-1621

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application to Amend  
Certificate of Convenience and  
Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 20, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

**Docket Title and Number:** Application of Bowie-Cass Electric Cooperative, Inc. to amend certificate of convenience and necessity for proposed transmission line within Bowie County, Docket Number 11118 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 11118, Bowie-Cass Electric Cooperative requests approval of its application to construct 8.72 miles of 138-kV transmission line and an associated substation in Bowie County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

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

TRD-9205790 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 27, 1992

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

◆ ◆ ◆  
**Notices of Intent to File Pursuant to  
PUC Substantive Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific CentraNet service for Electronic Data Systems, Plano.

**Tariff Title and Number.** Application of GTE Southwest Incorporated for Approval of CentraNet Service for Electronic Data Systems Pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11121.

**The Application.** GTE Southwest Incorporated is requesting approval of CentraNet Service for Electronic Data Systems. The geographic service market for this specific

service is the Plano area.

Persons who wish to comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

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

TRD-9205793 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 27, 1992

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

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for John Eagle Dealership, Dallas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for John Eagle Dealership, Dallas, pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11126.

**The Application.** Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for John Eagle Dealership. The geographic service market for this specific service is the Dallas area.

Persons who wish to comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

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

TRD-9205788 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 27, 1992

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

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Amarillo National Bank, Amarillo.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Amarillo National Bank pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11134.

**The Application.** Southwestern Bell Telephone is requesting approval of Plexar-Custom Service for Amarillo National Bank. The geographic service market for this specific service is the Amarillo area.

Persons who wish to comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information

Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

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

TRD-9205873 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 28, 1992

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



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Bell County, Belton.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Bell County Pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11135.

**The Application.** Southwestern Bell Telephone is requesting approval of Plexar-Custom Service for Bell County. The geographic service market for this specific service is the Belton area.

Persons who wish to comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

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

TRD-9205872 Mary Ross McDonald  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: April 28, 1992

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



## Texas Water Commission Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th-day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to NCNB-TEXAS (Permit 16348) on April 22, 1992, assessing \$3,680 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Bob Warneke, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-9205778 Laurle J. Lancaster  
Notices Coordinator  
Texas Water Commission

Filed: April 27, 1992

For further information, please call: (512) 463-7898



## Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of April 13-April 24, 1992.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Cal-Tex Spice Co., Inc.; a food processing plant; the plant site is at 8909 Kingsway in the City of Anthony, El Paso County; amendment; 02591.

City of Anahuac and Trinity Bay Conservation District; the wastewater treatment facilities; are on the west bank of the West Fork of Double Bayou; approximately 1/2 mile south of the intersection of Paskey Road and West Fork of Double Bayou in Chambers County; amendment; 10396-01.

BASF Corporation; a plant that manufactures organic chemicals, monomers for synthetic fibers, and will add drainage aid polymers when the proposed facility is added. The plant site is in the southwest quadrant defined by the intersection of State Highway 288 and State Highway 332 near the City of Freeport, Brazoria County; amendment; 01802.

Bell County Water Control and Improvement District Number 3; the wastewater treatment facilities; are approximately 3/4 mile southeast of Nolanville, on South Nolan Creek in Bell County; renewal; 10797-01.

City of Del Rio; the wastewater treatment facilities; are southwest of the intersection of Martinez and Noriega Streets in the City of Del Rio in Val Verde County; renewal; 10159-05.

Gifford-Hill-American, Inc., Grand Prairie; a facility which manufactures concrete pressure pipe. The facility site is at 1004 Meyers Road in the City of Grand Prairie, Dallas County; new; 03446.

Human Health Services One, Inc.; the wastewater treatment facilities; are to be approximately 3.5 miles east-northeast of the intersection of Interstate 35 West and FM Road 1187 in southern Tarrant County; new; 13588-01.

Jay Jones doing business as 5-J Dairy; a dairy; the dairy is located on the north side of an unnamed county road approximately one mile east of U.S. Highway 35 and one mile north of the intersection of U.S. Highway 35 and FM Road 308 in McLennan County; new 03443.

City of La Ward; the wastewater treatment facilities; the plant site is on the west side of Sam Houston Avenue approximately 200 feet northeast of the intersection of Palacios Street and Rio Grande Street and Rio Grande Street in the City of La Ward in Jackson County; amendment; 13479-01.

Love's Country Stores, Inc.; a convenience store, gasoline and diesel service station; the plant site is at 12800 Horizon Boulevard in El Paso County; new; 03482.

Sunil K. Mehta; the wastewater treatment facilities; are in the northeast corner of the property which fronts the west side of State Highway 6 approximately 3/4 mile north of FM Road 1093 in Harris County; renewal; 12361-01.

City of Mount Vernon; the wastewater treatment facilities; the plant site is approximately 1,500 feet east of State Highway 37 and 1,500 feet north of U.S. Highway 67 in Franklin County; renewal; 11122-02.

North Green Municipal Utility District; the wastewater treatment facilities; are on the west side of Hardy Road, approximately 1/2 mile south of Hardy Road and Rankin Road in Harris County; renewal; 12206-01.

North Texas Municipal Water District; the wastewater treatment facilities; are approximately 2,310 feet southeast of the intersection of Spring Valley Road and Interstate Highway 75 in the City of Richardson in Dallas County; renewal; 10257-01.

Orange County Water Control and Improvement District Number 1; the Tiger Lake STP Wastewater Treatment Facilities; the facilities are approximately 3,500 feet southwest of the intersection of FM Road 1132 and State Highway 105 in Orange County; amendment; 10875-03.

Osage Cattle Company; a feedlot; the feedlot is on the west side of County Road 272, approximately two miles west of the intersection of FM Road 185 and County Road 272 in Coryell County; new; 03451.

Tall Timbers Utility Company, Inc.; the wastewater treatment facilities are 6, 500 feet west and 2,800 feet north of the intersection of Highway 69 South and FM Road 2813; 6.1 miles south-southwest of the City of Tyler in Smith County; amendment; 13000-01.

Tejas Financial Corporation; the wastewater treatment facilities; are approximately 4,000 feet southeast of the intersection of U.S. Highway 190 and FM Road 3126 in Polk County; renewal; 13209-01.

Tejas Financial Corporation; the Clear Water Cove Wastewater Treatment Facilities; the plant site is to be Lake Conroe's western shore, north of and with access to FM Road 1097, approximately 7.6 miles west of Willis in Montgomery County; new; 13575-01.

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

TRD-9205779      Laurie J. Lancaster  
Deputy Chief Clerk  
Texas Water Commission

Filed: April 27, 1992

For further information, please call: (512) 463-7906

## Texas Workers' Compensation Commission

### Notice of Public Hearing

The Texas Workers' Compensation Commission will hold a public hearing to solicit public comment on the Acute Care Inpatient Hospital Fee Guideline under "new law," §134.400, on Thursday, May 28, 1992, at 3 p.m. and will continue until oral testimony is completed. The hearing will be held in Austin in the Tippy Foster Meeting Room 910-911 of the Southfield Building at 4000 South IH 35.

The commission encourages the public to submit copies of oral comments in writing. If you have written testimony or handouts, the commission requests that you provide 10 copies for commission use. There will not be any visual aid equipment available.

Depending on the number of speakers, participants may be asked to limit their oral testimony by giving only a summary of their written testimony.

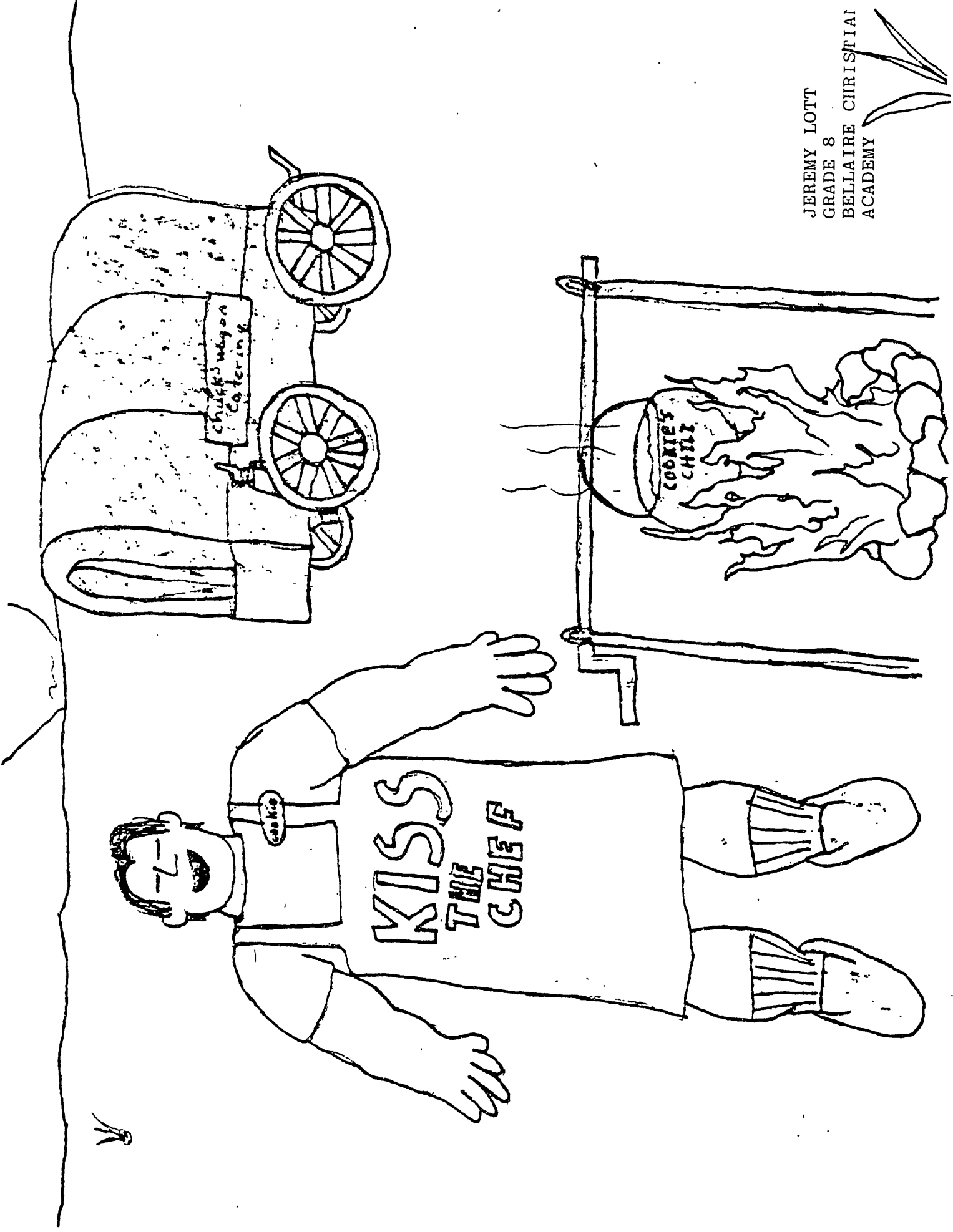
Issued in Austin, Texas, on April 27, 1992.

TRD-9205811      Susan Cory  
General Counsel  
Texas Workers' Compensation Commission

Filed: April 27, 1992

For further information, please call: (512) 448-7962



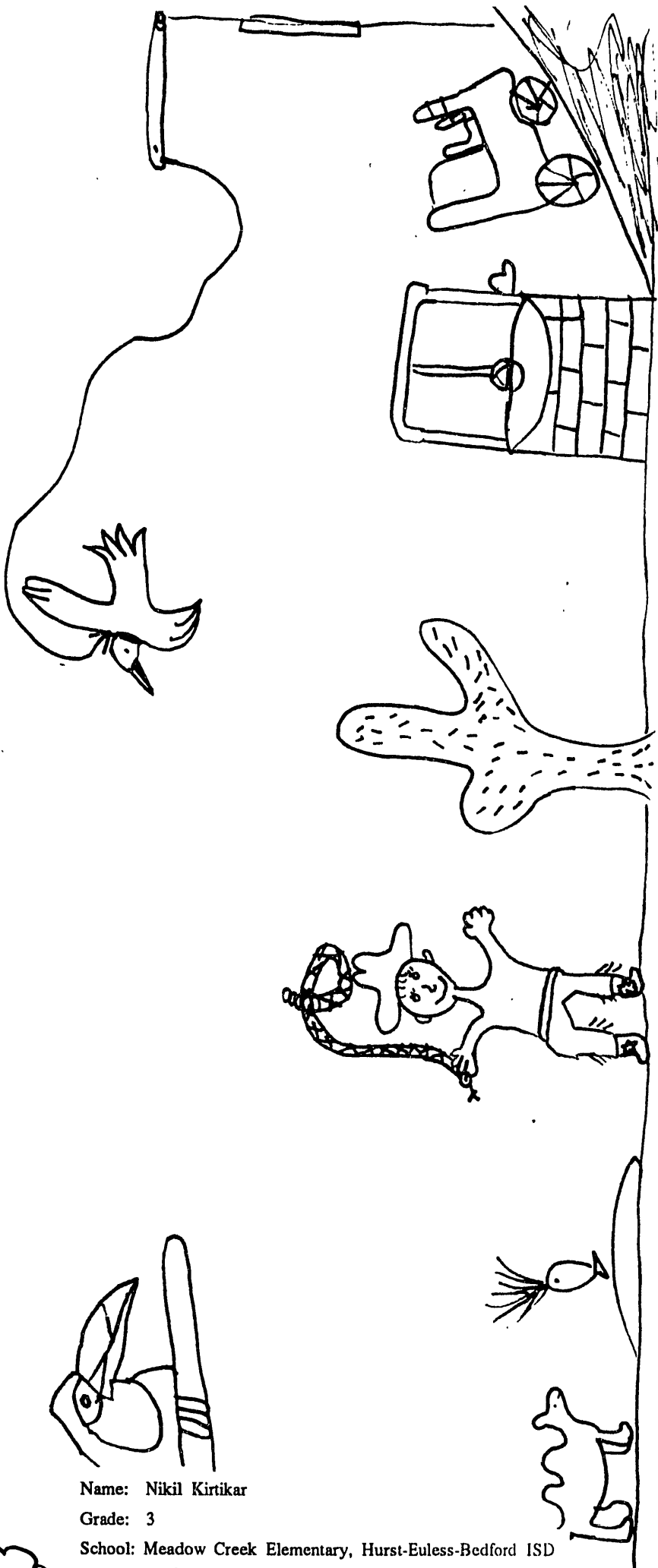
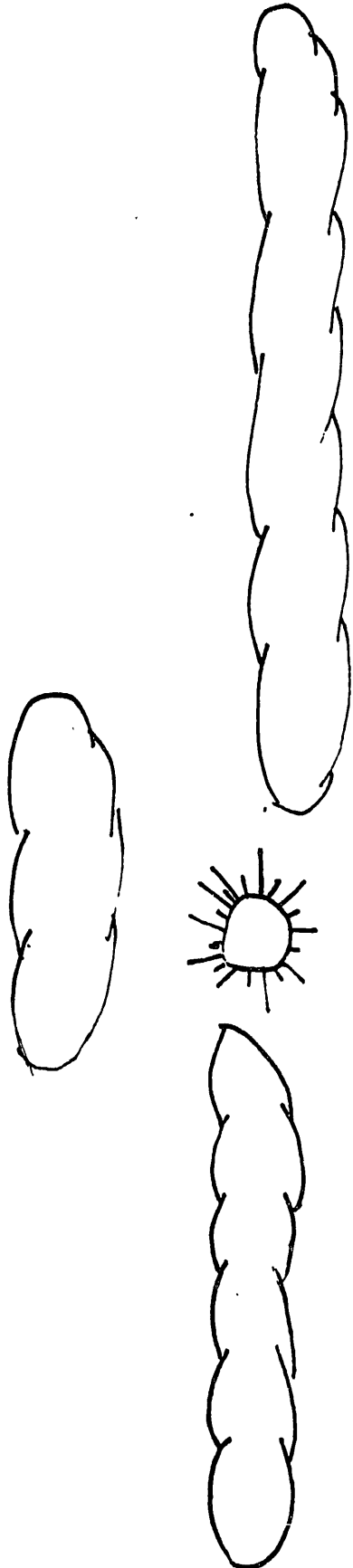


JEREMY LOTT  
GRADE 8  
BELLAIRE CHRISTIAN  
ACADEMY





SETH CASH  
GRADE 8  
BELLAIRE CHRISTIAN ACADEMY



Name: Nikil Kirtikar

Grade: 3

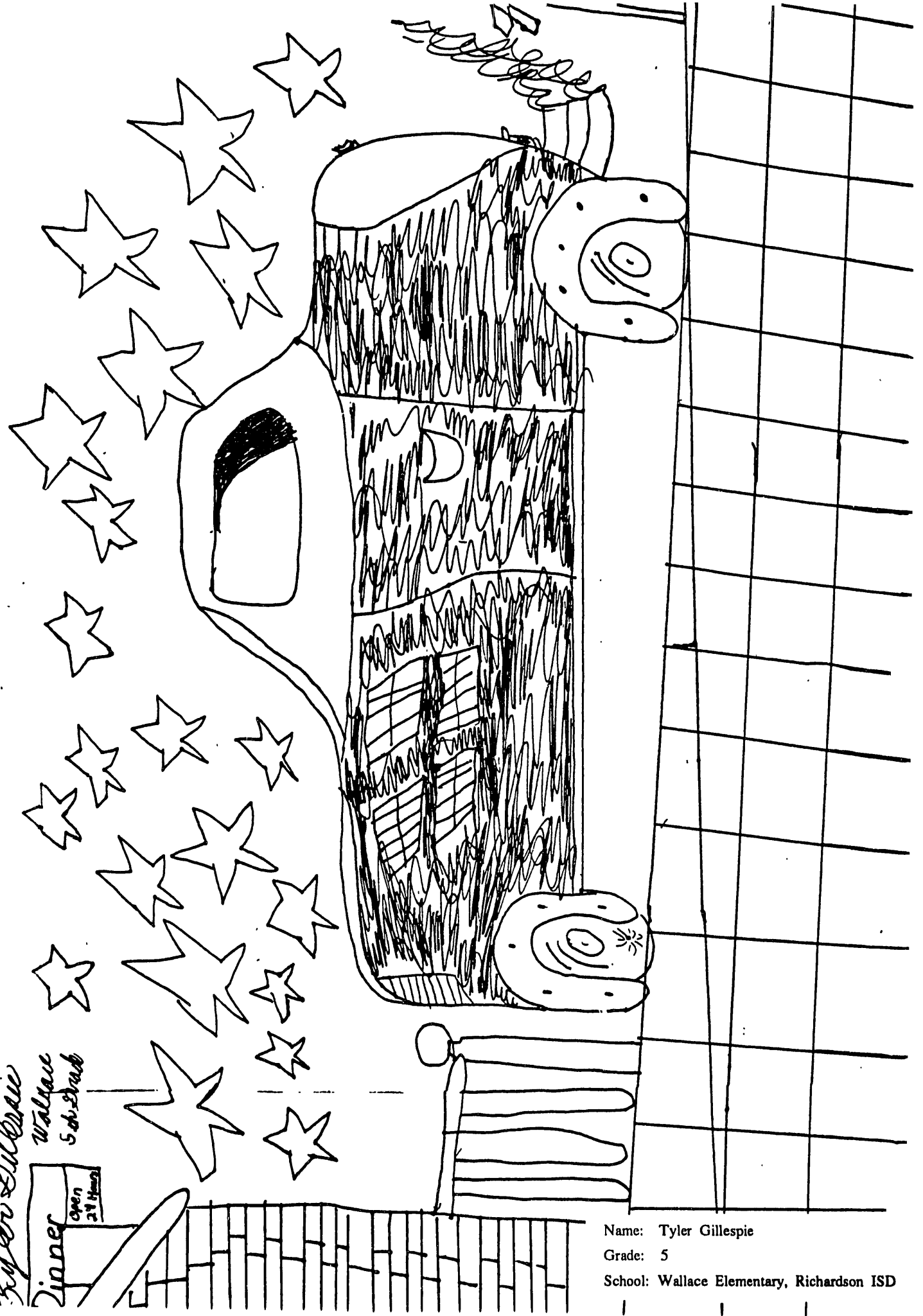
School: Meadow Creek Elementary, Hurst-Euless-Bedford ISD



Tyler & DilCraie

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5th Street

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24 Hours



Name: Tyler Gillespie

Grade: 5

School: Wallace Elementary, Richardson ISD

## 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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