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# Texas Register

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Proposed Sections-sections proposed for adoption

Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings-notices of open meetings

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

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## Texas Register Publications

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**Janice Rhea**  
**Carla Carter**

Circulation/Marketing  
**Jill S. Dahnert**  
**Roberta Knight**

TAC Editor  
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TAC Typographer  
**Madeline Chrisner**

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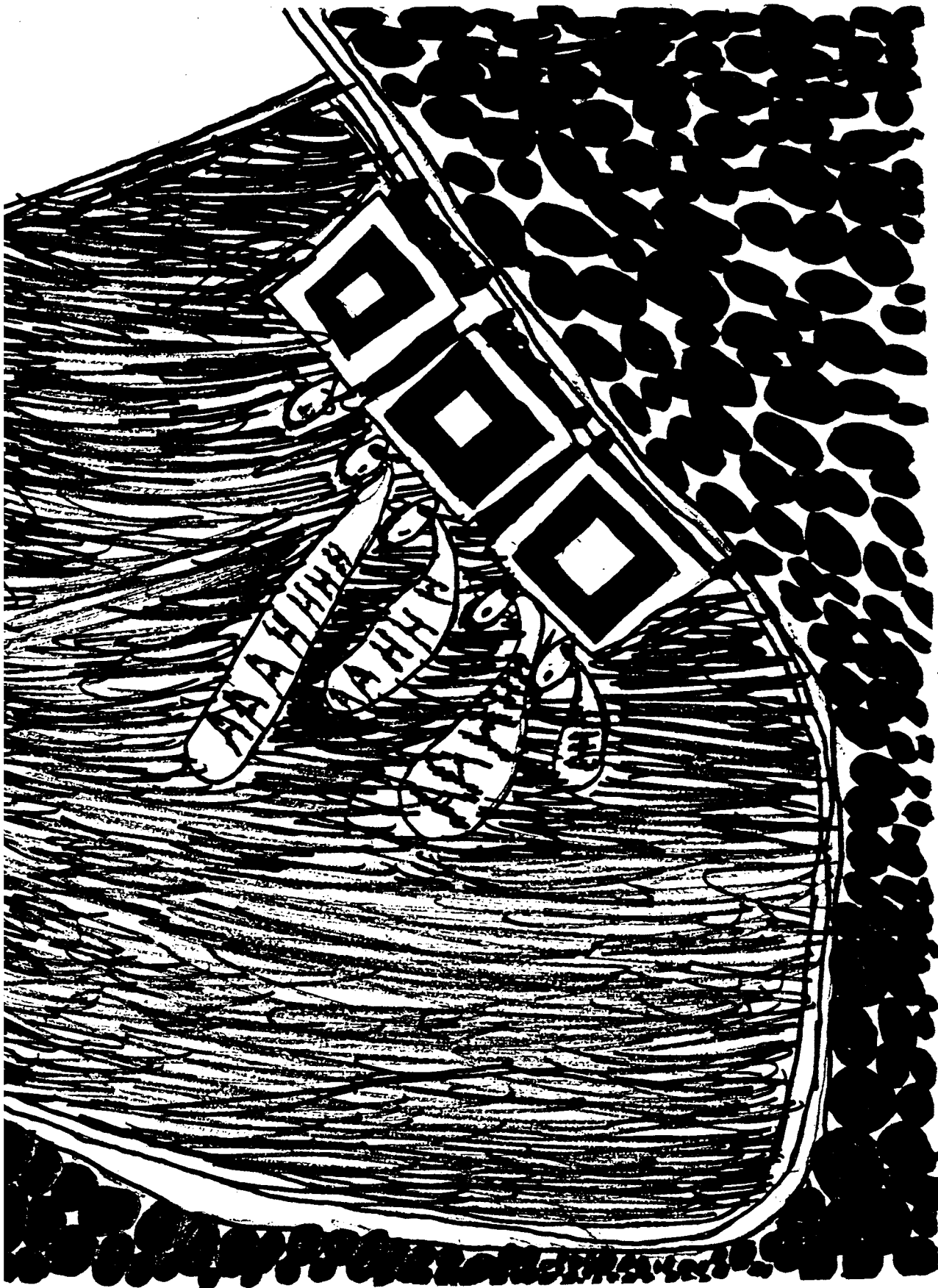
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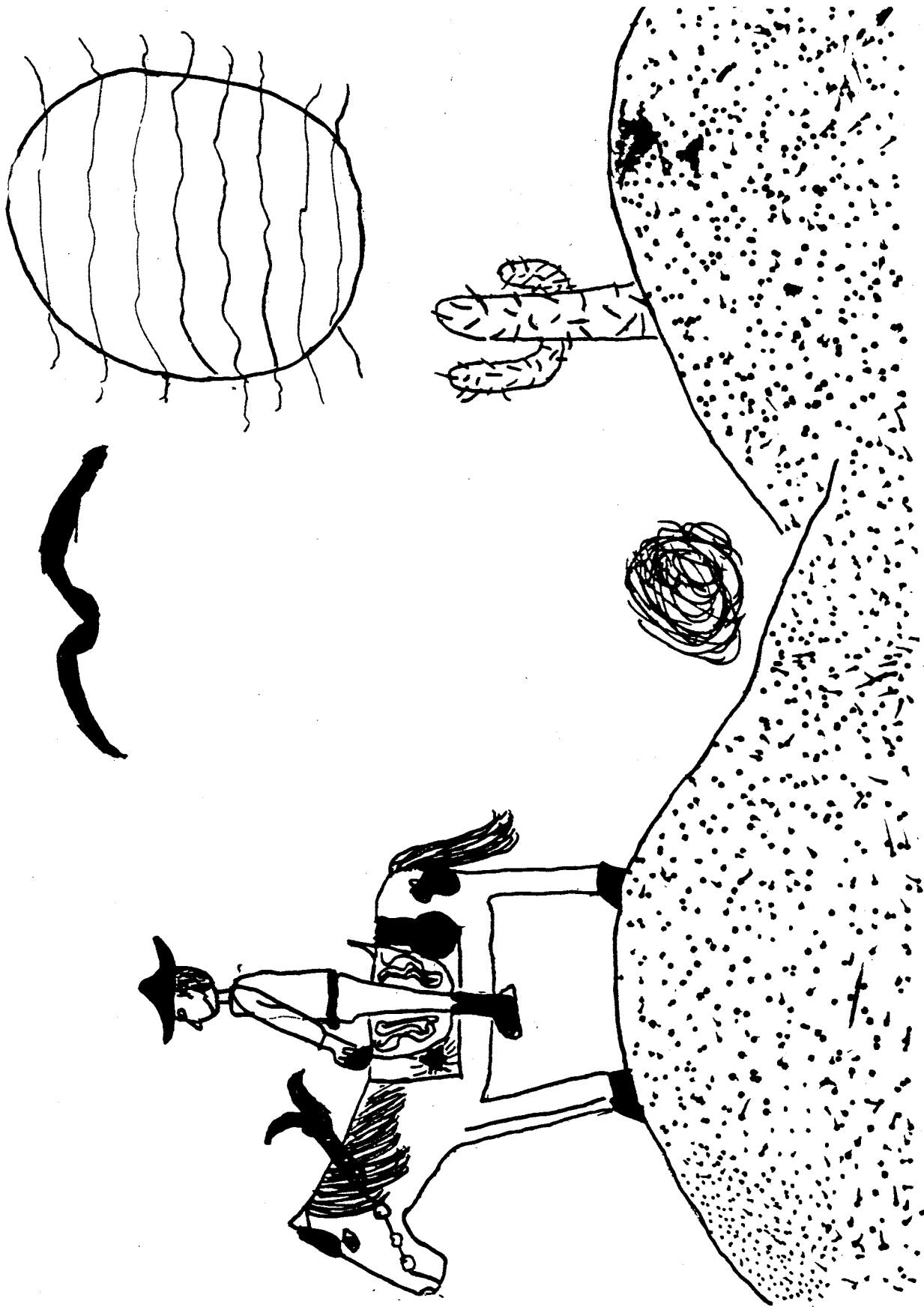
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Name: Sander Ray

Grade: 3

School: Hamilton Park Pacesetter, Richardson ISD



Name: Emily Hollingsworth

Grade: 3

School: Hamilton Park Pacesetter, Richardson ISD



Name: Dewanda Weeks

Grade: 3

School: Hamilton Park Pacesetter, Richardson ISD

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40 TAC §117.2—7723

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43 TAC §§1.400-1.409—7681, 7724

43 TAC §§9.20-9.22—7019

43 TAC §17.69—7020





# 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 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter Y. Controlled Substances Tax

###### • 34 TAC §3.681

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.681, for a 60-day period effective December 30, 1991. The text of amended §3.681 was originally published in the September 3, 1991, issue of the *Texas Register* (16 TexReg 4795).

Issued in Austin, Texas, on December 19, 1991.

TRD-9116172

Anne Hildebrand  
Agency Liaison  
Comptroller of Public  
Accounts

Effective date: December 30, 1991

Expiration date: February 28, 1992

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

###### • 34 TAC §3.682

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.682, for a 60-day period effective December 30, 1991. The text of amended §3.682 was originally published in the September 3, 1991, issue of the *Texas Register* (16 TexReg 4795).

Issued in Austin, Texas, on December 19, 1991.

TRD-9116265

Anne Hildebrand  
Agency Liaison  
Comptroller of Public  
Accounts

Effective date: December 30, 1991

Expiration date: February 28, 1992

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

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Administration

##### Conditional Grant Program

###### • 43 TAC §§1.400-1.409

The Texas Department of Transportation adopts on an emergency basis new §§1.400-1.409 concerning a conditional grant program. Section 1.400 describes the department's intent which is to establish procedures for the administration of a conditional grant program; §1.401 describes the program, which is to provide financial assistance to eligible minority students who exhibit an aptitude for engineering, intend to become civil engineers and work for the department for two years after graduation; §1.402 defines terms to be used under this undesignated head; §1.403 describes the eligibility requirements to receive financial aid; §1.404 describes how a student applies for a conditional grant; §1.405 requires eligible students to sign an agreement setting forth the terms and conditions of the grant; §1.406 describes the type and amount of financial assistance that eligible students may receive; §1.407 describes how a student may receive a stipend as part of a conditional grant; §1.408 describes how a student would be declared in default of the grant agreement; and §1.409 describes how a student who defaults will repay the conditional grant.

Adoption on an emergency basis is necessary to implement the requirements of Senate Bill 352, Regular Session, 72nd Legislature, 1991, which requires the Texas Department of Transportation to establish and administer a conditional grant program to provide financial assistance to minority students who exhibited in the student's secondary school performance an aptitude for engineering and who intend to become civil engineers and work for the department for two academic years following graduation. Senate Bill 352 requires the department to make conditional grants to eligible students for use beginning with the fall semester in 1992. Emergency adoption will enable the department to comply with the legislative requirement to adopt rules by January 1, 1992, and will prevent undue hardship to potentially eligible students applying for fall semester assistance.

The emergency sections are adopted under Texas Civil Statutes, Article 6666, which provides the Texas Transportation Commission

with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Senate Bill 352, 72nd Legislature, Regular Session, 1991, which requires the department to adopt rules implementing a conditional grant program.

**§1.400. Purpose.** The sections under this undesignated head establish procedures for the administration of a conditional grant program which will provide financial assistance to eligible minority students who intend to become civil engineers and work for the department.

**§1.401. Program.** Upon determination by the executive director or his designee, the department may provide financial assistance to each eligible minority student who:

(1) has exhibited an aptitude for engineering in the student's secondary school performance;

(2) intends to become a civil engineer; and

(3) intends to work for the department for the two years immediately following the date of the student's receipt of a civil engineering degree from an accredited State of Texas institution.

**§1.402. Definitions.** The following words and terms, when used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Accredited-Certified by a nationally recognized agency determined by the United States Secretary of Education to be a reliable authority concerning the quality of civil engineering degree programs.

Available grants-The number of grants, based on available funding, the commission determines may be awarded in an academic year.

Committee-The Conditional Grant Selection Committee, appointed by the executive director, that is responsible for ranking applicants as based on selection criteria.

Conditional grant-Financial assistance given to an eligible student.

Declaration of intent-A signed and notarized document stating that the student intends to become a civil engineer and work for the department for two years immediately following the date of the student's receipt of a civil engineering degree.

Department-The Texas Department of Transportation.

Executive director-The chief administrative officer of the Texas Department of Transportation.

Institution-Any public senior college or university of higher education as certified by the Coordinating Board, Texas College and University System in accordance with the Education Code, §61.003.

Minority student-A person who has racial or ethnic identification with one of the following groups.

(1) Black-All persons having origins in any of the black racial groups of Africa (Not of Hispanic origin).

(2) Hispanic-All persons of Mexican, Puerto Rican, Cuban, Central or South American, or Spanish culture or origin, regardless of race.

(3) Asian or Pacific Islander-All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(4) American Indian/Alaskan Native-All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

Stipend-A monthly amount of financial assistance based on financial need.

Texas resident-A person qualifying as a Texas resident pursuant to 19 TAC §21.1 et seq.

#### §1.403. Eligibility.

##### (a) Initial eligibility.

(1) To be initially eligible for a conditional grant, a student must:

(A) be a Texas resident;

(B) be a minority;

(C) be ranked by the committee among the top number of applicants commensurate with the number of available grants, pursuant to §1.404 of this title (relating to Application); and

(D) except as provided in paragraph (2) of this subsection, exhibit in secondary school performance an aptitude for engineering by receiving:

(i) an overall grade point average of at least 3.00 on a 4-point scale or a minimum score of 850 on the SAT or 21 on the ACT; and

(ii) a grade of at least "B" in no fewer than three laboratory science or higher mathematics courses.

(2) A student, who by reason of course unavailability cannot satisfy the requirements under paragraph (D)(ii) of this subsection, may substitute the following:

(A) a grade of at least "B" in no fewer than two mechanical or engineering drawing or related vocational educational courses; and

(B) letters of recommendation from two knowledgeable secondary school teachers or from one professional engineer indicating that the student has an aptitude for engineering.

(b) Continued eligibility. In order to maintain eligibility, a student must:

(1) be enrolled each semester in an institution in a course of instruction leading toward a degree in civil engineering;

(2) maintain an overall institutional grade point average of at least 2.50 on a 4-point scale; and

(3) receive credit for not fewer than 12 hours each semester.

(c) Waiver. The department may waive, upon approval of the executive director, the requirement that a student receive credit for not fewer than 12 hours each semester if a student demonstrates hardship. Hardship may involve serious illness, family emergency, or other extraordinary circumstances beyond the control of the student.

#### §1.404. Application.

(a) Application for conditional grant.

(1) To apply for a conditional grant, a student must submit to the department:

(A) a completed application in a form prescribed by the department; and

(B) a declaration of intent.

(2) The application will require information and documentation relating to residency status, secondary school performance, the intended enrollment institution, and such other information the department deems necessary to determine eligibility pursuant to §1.403 of this title (relating to Eligibility).

(3) An application must be submitted by March 1st for fall semester admission and by October 1st for spring semester admission.

(b) Review of applications. The committee will review applications for eligibility and will rank applicants according to the following selection criteria:

(1) secondary school grade point average;

(2) SAT or ACT score;

(3) honors and awards from, and participation in, technical, scientific, engineering, or academic organizations such as Texas Alliance for Minorities in Engineering, Junior Engineering Technical Society, and the Summer Enrichment Experience in Engineering program;

(4) courses and grades in secondary school math and science courses;

(5) vocational education; and

(6) work experience.

#### §1.405. Grant Agreement.

(a) Notice. The department will send written notice to all applicants informing them of their eligibility.

##### (b) Execution.

(1) If determined to be eligible, a student will be required to execute a grant agreement prior to receiving a conditional grant.

(2) The grant agreement will be in a form prescribed by the department and will set forth the terms and conditions of the grant, including, but not limited to, the amount of the grant and the requirements of continued eligibility pursuant to §1.403 of this title (relating to Eligibility).

#### §1.406. Conditional Grant.

(a) The amount of a conditional grant is the sum of:

(1) the amount of tuition and fees for the student, as certified by the institution; and

(2) a stipend based upon financial need as provided by §1.407 of this title (relating to Stipend).

(b) Each semester the department will distribute a conditional grant for each eligible student on receipt of an enrollment report and certification of the amount of tuition and fees for the student from the institution.

(c) The total amount of any one conditional grant may not exceed \$2,500 per academic semester.

(d) If the amount appropriated to the department for conditional grants is less than the estimated amount of all unpaid conditional grants, the department will proportionally reduce each unpaid conditional grant.

**§1.407. Stipend.**

(a) A student desiring to receive a stipend must:

(1) sign a financial information release statement; and

(2) complete the required financial need forms at the institution.

(b) The department will award a stipend to the student upon certification by the institution of the student's certified financial need.

**§1.408. Default.** The department will declare a student to be in default of the grant agreement and will require the student to repay all conditional grant funds received from the department if the student:

(1) withdraws from the institution; or

(2) fails to comply with one or more requirements of the grant agreement.

**§1.409. Repayment.** Upon a determination of a default of the grant agreement the

department will establish a schedule for installment repayment for a period not to exceed 10 years beginning no fewer than six months subsequent to the determination of default.

Issued in Austin, Texas, on December 19, 1991.

TRD-9116178

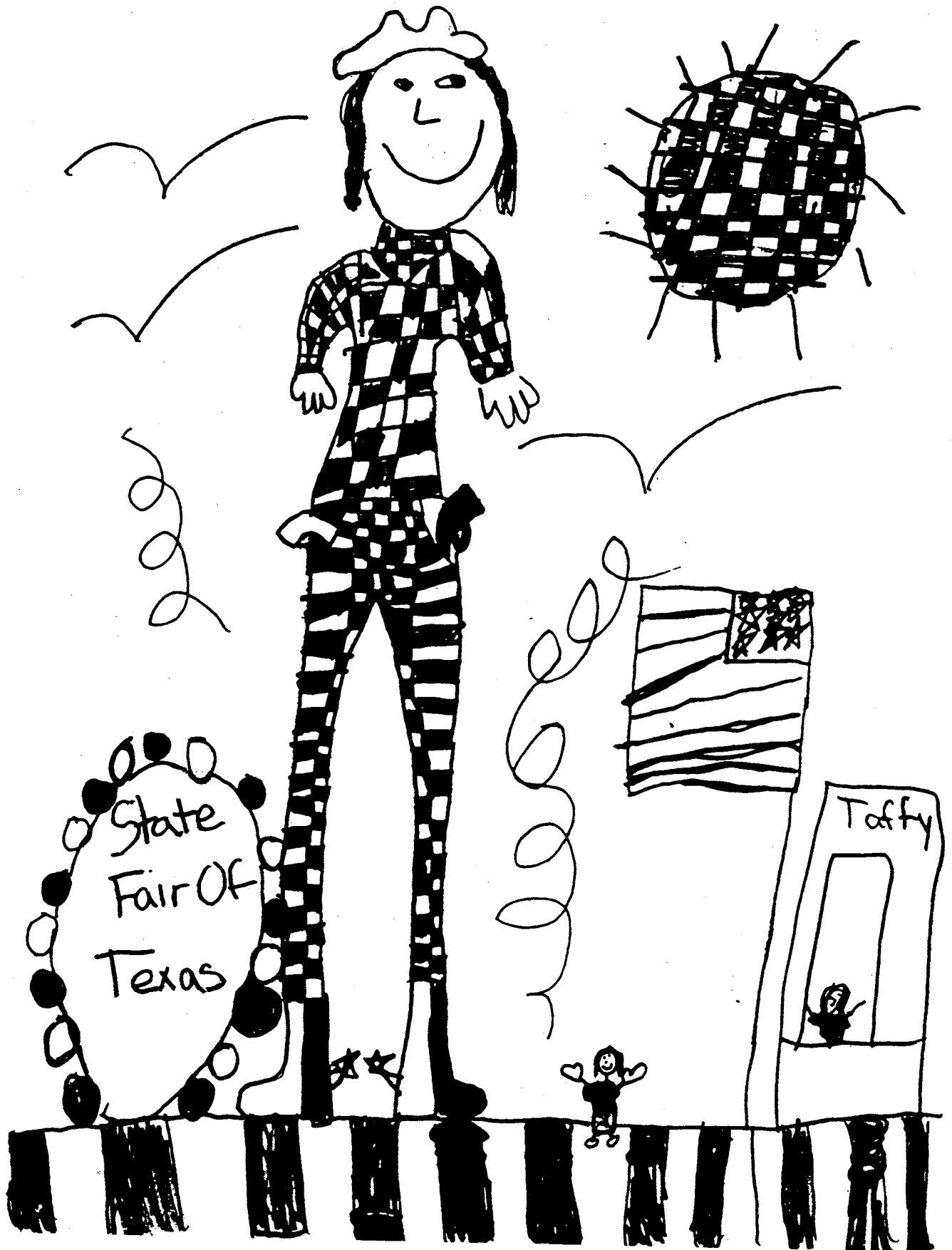
Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Effective date: December 19, 1991

Expiration date: April 17, 1992

For further information, please call: (512)  
463-8630

◆ ◆ ◆



Name: Megan Schoen

Grade: 3

School: Hamilton Park Pacesetter, Richardson ISD

# Proposed Sections

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

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

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

### Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

#### • 4 TAC §§28.1-28.10, §28.13

The Board of Directors for the Texas Agricultural Finance Authority of the Texas Department of Agriculture proposes amendments to §§28.1-28.10 and §28.13, concerning procedures for participation in the Texas Agricultural Finance Authority (TAFE) Loan Guaranty Program. The amendments generally clarify existing procedures and add some new application requirements which will serve to allow the TAFE Board and the Credit Review Committee which conducts a preliminary review of applications for the loan guaranty program to more effectively screen applicants. In addition, the amendments place the final approval of loan applicants with the full TAFE Board; restructure the Credit Review Committee; and establish procedures for appeal of a denial of an application by the Credit Review Committee.

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

Mr. Kennedy also has determined that or each year of first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of procedures for members of the public wishing to utilize the TAFE loan guaranty program and increased board participation in the loan guaranty approval process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The amendments are proposed under the Texas Agriculture Code Annotated, §58.023, which provides the TAFE Board of Directors with the authority to adopt rules to establish

criteria for eligibility of applicants and lenders under the TAFE Loan Guaranty Program; and §58.022, which provides the board with the authority to adopt rules and procedures for administration of the TAFE Loan Guaranty Program.

**§28.1. Authority.** Through action of the Texas Legislature and the approval of the Texas voters in the passage of Constitutional Amendment 3 on November 7, 1989, the Texas Agricultural Finance Authority is authorized to issue general obligation bonds and revenue bonds to provide financial assistance to eligible agricultural businesses through a direct loan, a loan to lenders, **purchasing participations in loans, or a loan insurance or a loan guaranty program.**

**§28.2. Purpose.** The purpose of the Texas Agricultural Finance Authority Loan Guaranty Program is to provide financial assistance to eligible agricultural businesses that otherwise would not be **provided** [made] and that the board of the authority considers to present a reasonable risk and have a sufficient likelihood of repayment. The authority is mandated to support the expansion, development, and diversification of production, processing, marketing, and exporting of Texas agricultural products. These rules establish standards of eligibility and the application procedures for a loan guaranty program.

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

**Act**—The Texas Agricultural Finance [Authority] Act, Texas Agriculture [Agricultural] Code, Chapter 58.

**Agricultural product**—An [agricultural product is an] agricultural, horticultural, viticultural, or vegetable product, bees, honey, fish or other seafood, planting seed, livestock, a livestock product, a forestry product, Poultry, or a poultry product, either in its natural or processed state, or any other agricultural product approved by the authority, that has been produced, processed, or otherwise had value added to it in this state.

**Application**—An application, including supporting documentation and schedules as required by the board, for participation in this program.

**Credit review committee**—The committee, consisting of two board members, as determined by the board chairman, and the commissioner of agriculture or the deputy commissioner of agriculture or the official of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs [chaired by the commissioner of the Texas Department of Agriculture or his designee].

**Interest rate**—The interest rate on a guaranteed loan shall be [determined by the board and the participating lender on a project-by-project basis].

**Loan guaranty amount**—With respect to loans made by a lender, a sum measured in terms of United States dollars[,] that the authority pays to the lender to acquire an undivided interest in any loan or, in the case of default by the borrower, the authority agrees to pay to the lender, not to exceed the percentage as stated in the guaranty agreement.

**Lender**—A lending institution, including a bank, banking association, savings and loan association, trust company, mortgage company, investment banker, credit union, underwriter, life insurance company, or any affiliate of those entities, and also **including** [includes] any other financial institution or governmental agency that customarily provides financing of agricultural loans or mortgages, or any affiliate of such an institution or agency, any non-profit certified development company, or any institution that the **board** [authority] determines is an experienced and sophisticated lender.

**Staff**—The staff of the Texas Agricultural [Agriculture] Finance Authority or staff of the department **Performing work for the authority.**

**§28.4. Examination of Records.** Any party requesting the examination of records pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the document to be viewed, and if **copies** are [photocopying is] desired [, the appropriate fee must accompany the request].

**§28.5. Written Communication with the Authority [Department].** Applications and

other written communications to the authority [department] should be addressed to the attention of the Texas Agricultural Finance Authority, in care of Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

#### *§28.6. Texas Agricultural Fund.*

(a) The fund. The fund, established in the State Treasury, may consist of general obligation bond proceeds, appropriations or transfers made to the fund, guaranty fees, [and any other] monies received from the operation of the program. [and] interest paid on money in the fund, and any other monies received from other sources for the fund. The board may provide for the establishment and maintenance of separate accounts within the fund, including loan guaranty program accounts as prescribed by the board.

(b) Loan guaranty. The authority may determine, in the application process, that a loan guaranty to a lender would best facilitate the project. Such loan guaranty shall not exceed 90% of the total loan, with such percentage being determined on a case-by-case basis. The term of the loan may be varied in length as determined by an agreement between the authority and the lender. The loan guaranty shall not exceed \$2 million [except in instances where the maximum is established by the board, but in no case shall the loan guaranty exceed 90% of the project].

#### *§28.7. Project Eligibility Requirements.*

(a) Projects. An applicant is eligible for assistance from [to submit an application to] the Texas Agricultural Finance (the Authority) if the proposed project meets the following criteria:

(1) the project provides significant benefits for the expansion, development, and diversification of production, processing, marketing, and exporting of Texas agricultural products; provided that the board shall give priority to agricultural businesses that include producers of Texas agricultural products [in the ownership of the businesses]; provided also, that the board will [should] give preference to [the] applicants, the majority ownership of which is held by citizens of the United States; and if the applicant is a corporation, the board will give preference to a corporation organized under the laws of the State of Texas with majority ownership by Texas residents; provided further, that the board will [shall] give preference to applicants who are Texas residents doing business in the state, and then to applicants who can demonstrate that the financed activities will take place predominantly in the state; provided, finally, that the board will also give preference to those agricultural

businesses that demonstrate a significant new technology or market opportunity for Texas producers;

(2)-(8) (No change.)

(b) Project costs. The proceeds of the guaranteed loan may be used to finance costs incurred in connection with the production, processing, marketing, or export of Texas agricultural products, including, but not limited to, the costs of:

(1) acquisition of and improvements to land or interests [interest] in land;

(2)-(4) (No change.)

(5) acquisition, installation, rehabilitation, operation and maintenance of machinery, equipment, furnishings, and facilities;

(6)-(12) (No change.)

(c) (No change.)

#### *§28.8. Filing Requirements and Consideration of Applications.*

(a) (No change.)

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

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

(d) Credit Review Committee. Staff [The Authority's staff] will submit a report on each application to the Credit Review Committee [, chaired by the commissioner or his designee and consisting of department staff and outside advisors as determined by the commissioner]. The Credit Review Committee will recommend approval or disapproval of each application to the board [commissioner]; recommendations for approval require an affirmative vote of all members of the committee present and voting. The Credit Review Committee may, in its discretion, impose conditions and requirements in connection with approval of an application for a project. Failure or unwillingness to satisfy any of these conditions or requirements within a reasonable period of time will constitute denial of the application. whereupon the applicant

will have the right to appeal as set out in subsection (i) of this section.

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

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

[(f)][(g)] Denial of application. If the application is disapproved, the Authority will notify the applicant and the lender in writing identifying the reasons for denial. The applicant will, in most cases, be given 30 days to cure the reasons for denial. After the passage of the time specified for cure, if the deficiencies are not cured, a second denial letter will be sent from the Authority stating the reasons for final denial.

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

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

(i) Appeal of a final Credit Review Committee decision. If an application does not receive a recommendation of approval by unanimous vote pursuant to subsection (d) of this section, following the end of the period allowed under subsection (f) of this section to cure deficiencies the applicant may petition the board for review filing a written request with the official of the department designated by the commissioner of agriculture as being responsible for the department's agricultural finance programs within 10 days of the Credit Review Committee's Action. The board may grant or deny the

**§23.45. Billing.**

(a)-(e) (No change.)

(f) Rendering and form of bills.

(1) Telephone utilities.

(A) Bills for telephone service shall be rendered monthly unless otherwise authorized by the commission, or unless service is rendered for a period of less than on month, and shall provide a listing of all charges due and payable including outstanding amounts in the same customer class the utility has chosen to transfer from a customer's prior delinquent account(s). The utility shall provide, at no charge to the customer, a breakdown of local service charges at the time the service is initially installed or modified and upon request. Additionally, a notice shall be included on the customer's bill offering, at no charge to the customer, either an annual or monthly itemized breakdown of all local service charges. The itemized breakdown may be provided as a part of the customer's bill or as a separate mailing. Itemized toll statements shall be included in each bill. If the telephone utility is billing the customer for services provided by another telecommunications utility or for services provided by a private pay telephone provider that uses automated call completion technology to complete operator service calls, the bill shall identify the utility or the private pay telephone provider whose rates are used to calculate the charges for each call listed on the bill. Customer billing sent through the United States mail shall be sent in an envelope.

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

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

(g)-(n) (No change.)

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116105

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

Earliest possible date of adoption: January 27, 1992

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

## Part III. Texas Alcoholic Beverage Commission

### Chapter 55. Bingo Regulations

#### Bingo Regulation and Tax

##### • 16 TAC §55.550

The Texas Alcoholic Beverage Commission proposes an amendment to §55.550, concerning bingo reports. This action is amending the emergency adoption filed in the September 10, 1991, issue of the *Texas Register* (16 TexReg 4892). The amendment amends subsections (a) and (b), adds a new subsection (c), reletters and amends the present subsections (c) and (e), and reletters the present subsection (d). The amendment provides for a quarterly statistical report and a monthly bingo gross receipts tax report, provides for monthly payment of the bingo gross receipts tax and bingo prize fee, provides for monthly reporting of the bingo prize fee, makes returns and reports due on the 25th day of the applicable month rather than the 15th day, and specifies an effective date of March 1, 1992.

Thomas L. Byrd, supervisor of audit training, has determined that for the first five-year period the section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the section. This determination is based upon an assumption that the existing taxpayer base would not change whether or not this proposed amendment is adopted. This assumption and the resulting estimates are disputed and therefore subject to revision either way if public comment or other input demonstrates that revision is warranted.

For the state government for the first year, the estimated additional cost is \$47,463, the estimated reduction in costs is \$0, and the estimated loss in revenue is \$1,027,173. For each of the following four years, the estimated additional costs is \$25,103, the estimated reduction in costs is \$0, and the estimated loss in revenue is \$6,883,336.

For local governments, for each of the first five years there are no estimated additional costs, and no estimated reduction in costs. For the first year, estimated loss in revenue is \$1,148,023. For each of the following four years, the estimated loss in revenue is \$2,753,334.

Mr. Byrd 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 increased money to available to licensed organizations for charitable purposes. There will be no affect on small businesses. There is no anticipated net economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Howelton, Director, Bingo Division, P. O. Box 13127, Austin, Texas 78711, (512) 465-4924.

The amendment is proposed under Texas Civil Statutes, Article 179d, §16(a), and §23(e) which provide the commission with the

authority to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

##### §55.550. Bingo Reports.

(a) Quarterly reports for [gross receipts tax and for] information relating to the conduct of bingo games.

(1) An authorized organization holding an annual license, temporary license, or a temporary authorization to conduct bingo must file on a form provided by the Texas Alcoholic Beverage Commission (commission) a quarterly report for [gross receipts taxes and] statistical information relating to the conduct of bingo games. The report must be filed with the commission, [the report filed with the commission must be accompanied by any tax due,] and the report must be filed on or before the 25th [15th] day of the month following the end of the calendar quarter even if there were no gross receipts or gross receipts subject to tax for that quarter.

(2) The first \$15,000 of gross receipts each report period is exempt from tax.]

(2) [(3)] The report must be signed by the member designated as responsible for the filing of reports.

(b) Monthly bingo gross receipts tax reports.

(1) An authorized organization holding an annual license temporary license or temporary authorization to conduct bingo must file on a form provided by the commission a monthly report for bingo gross receipts taxes. The report must be filed with the commission, must be accompanied by any tax due, and must be filed on or before the 25th day of the following month, even if there were no gross receipts or gross receipts subject to tax for the month.

(2) The first \$15,000 of gross receipts each report period is exempt from tax.

(3) The report must be signed by the member designated as responsible for the filing of reports.

(c) [(b)] Monthly [Quarterly] reports for fee on prizes.

(1) An authorized organization holding an annual license, temporary license, or temporary authorization to conduct bingo must file on a form provided by the Texas Alcoholic Beverage Commission a monthly [quarterly] report for the fees on bingo prizes. The report must be filed with the commission, must be accompanied by any fees due, and must be filed on or before the 25th [15th] day of the following month [following the end of the calendar quarter] even if there were no prizes awarded during the month [quarter].

(2) The report must be signed by the member designated as responsible for the filing of reports.

(d)[(c)] Commercial lessor. A person holding an annual license or a temporary authorization to lease bingo premises must file on a form provided by the Texas Alcoholic Beverage Commission a quarterly report for bingo rental taxes and statistical information relating to the leasing of bingo premises. The report must be filed with the commission, must be accompanied by any tax due, and must be filed on or before the 25th [15th] day of the month following the end of the calendar quarter even if there were no gross rentals subject to tax for that quarter.

(e)[(d)] Failure to receive forms. The failure of licensees to receive forms from the commission does not relieve them from the requirement of filing reports and remitting taxes or fees on a timely basis.

(f) [(e)] Effective date. This rule, as amended, is effective March 1, 1992 [September 1, 1991].

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116189

Joe Darnall  
General Counsel  
Texas Alcoholic Beverage  
Commission

Proposed date of adoption: January 28, 1992

For further information, please call: (512) 465-4904

◆ ◆ ◆

## • 16 TAC §55.553

The Texas Alcoholic Beverage Commission proposes an amendment to §55.553, concerning books and records-distributors and manufacturers. The amendment amends subsection (a)(1)(B) to require that general sales invoices contain certain additional information and adds subsection (d) adopting a sample general sales invoice.

Thomas L. Byrd, supervisor of audit training, has determined that for the first of 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. Byrd also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an enhancement of the ability of licensed authorized organizations to better control their inventory of bingo cards and of the commission to trace the sales of bingo cards and the inventories of the licensed organizations. There will be no affect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Howelton, Director, Bingo Division, P. O. Box 13127, Austin, Texas 78711, (512) 465-4924.

The amendment is proposed under Texas Civil Statutes, Article 179d, §16(a), which provide the commission with the authority to adopt rules for the enforcement and administration of the Bingo Enabling Act.

### §55.553 Books and Records-Distributors and Manufacturers.

(a) Every licensed distributor and manufacturer must maintain a complete set of records including, but not limited to, the following:

(1) sales invoices:

(A) (No change.)

(B) each licensee must use a general sales invoice which sets out the following information:

(i) (No change.)

(ii) the customer name, [and] business address, and license number;

(iii) the address to which the items are delivered;

(iv) [(iii)] a full description of each item sold in as much detail as shown on the sample general invoice provided for in subsection (d) of this section;

(v) [(iv)] the quantity and sales price of each individual item in as much detail as shown on the sample general invoice provided for in subsection (d) of this section;

(vi) [(v)] the gross amount of sales to each customer;

(vii) [(vi)] the manufacturer's or distributor's license number; and

(viii) the name of the common carrier or other shipping agent;

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

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

(c) Records required by this rule must be maintained for at least four years.

(d) The commission adopts the following sample general sales invoice.



BINGO PAPER, INC.  
 11843 FIRST AVENUE  
 ANYTOWN, TEXAS 77711  
 PHONE (777) 651-1231  
 LC. NO. 1662011119

INVOICE  
 NO.  
 117732

DATE  
 12/31/91

SOLD TO:  
 BINGO CHARITY  
 12 CENTER STREET  
 ANYTOWN, TEXAS 77733  
 LC. NO. 1222011118

SHIPPED TO:  
 BIG BINGO HALL  
 1183 HALL AVENUE  
 ANYTOWN, TEXAS 77733

SHIPPED VIA:  
 RAPID MARINE FREIGHT

QUANTITY		DESCRIPTION	NUMBER OF FACES	UNITS	PRICE PER UNIT	TOTAL
PADS	SHEETS					
3,000		3 ON 4 UP PADS	36,000	1	\$79.95	\$79.95
3,000		3 ON 5 UP PADS	45,000	1	\$99.95	\$99.95
1,000		9 ON 5 UP PADS	45,000	1	\$100.25	\$100.25
2,000		9 ON 8 UP PADS	144,000	2	\$62.50	\$125.00
	45,000	3 ON SINGLE SHEETS	135,000	15	\$10.00	\$150.00
	15,000	9 ON SINGLE SHEETS	135,000	15	\$10.00	\$150.00
		MAGICBLOW AUTOMATIC BLOWER		1	\$4,995.00	\$4,995.00
9,000	60,000		540,000			
SUBTOTAL						\$5,700.15
SALES TAX						456.01
TOTAL DUE						\$6,156.16

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116188

Joe Darnall  
General Counsel  
Texas Alcoholic Beverage  
Commission

Proposed date of adoption: January 28, 1992

For further information, please call: (512) 465-4909

#### • 16 TAC §55.565

The Texas Alcoholic Beverage Commission proposes new §55.565, concerning minimum prices for bingo cards. The new section defines "minimum price," specifies the minimum prices, and provides that a licensed authorizes organization may not charge less than the applicable minimum prices for regulation or disposable paper bingo cards.

Thomas L. Byrd, supervision of audit training, has determined that for the first five-year period section is in effect there will be no fiscal implications for state or local government the section.

Mr. Bryd has also 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 ensure that competition among licensed organizations does not defeat the basic purpose of legalized bingo, the providing of funds for the charitable purposes of the licensed organizations. There will be no affect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Howelton, Director, Bingo Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711. The telephone number is (512) 465-4924.

The new section is proposed under Texas Civil Statutes, Article 179d, §16(d), which provide that the commission may set the price or adopt one or more schedules of prices at which bingo cards may be sold or otherwise furnished by a licensed authorized organization and under Texas Civil Statutes, Article 179d, §16(a), which provide the commission with the authority to adopt rules for the enforcement and administration of the Bingo Enabling Act.

#### §55.565. Minimum Prices for Bingo Cards.

(a) Definition. As used in this section, "minimum price" means the lowest price which a licensed authorized organization may charge for selling or furnishing an ups pad, a single sheet, or a hard card to a

player. This section sets minimum prices based on the number of cards faces sold and on the prizes awarded at that bingo occasion.

(b) Ups pads. Regardless of the number of sheets in an ups pad, the minimum price is determined by the number or card faces on all of the sheets in the pad. Thus a three on five up pad would have the minimum price for 15 card faces.

(c) Single sheets. The minimum price for single sheet is determined by the number of card faces on the sheet.

(d) Hard cards. The minimum price for a hard cards is the minimum price for one card face.

(e) Determining applicable minimum price. The minimum price per card face is determined by the amount of prizes offered or awarded at a bingo occasion according to the following schedule:

<u>regular bingo prize payout per occasion</u>	<u>price amount per face</u>
0 through \$1,500.00	\$0.10
\$1,500.01 through \$2,000.00	\$0.13
\$2,000.01 through \$2,500.00	\$0.15

(1) Sales below minimum price prohibited. A licensed authorized organization may not sell or otherwise furnish an ups pad, a single sheet, or a hard card for less than the applicable minimum price specified in this section.

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116187

Joe Darnall  
General Counsel  
Texas Alcoholic Beverage  
Commission

Proposed possible date of adoption: January 28, 1992

For further information, please call: (512) 465-4904

## Part VIII. Texas Racing Commission

### Chapter 303. General Provisions

#### Subchapter B. Powers and Duties of the Commission

##### • 16 TAC §303.32

The Texas Racing Commission proposes an amendment to §303.32, concerning power of entry. The amendment clarifies the authority of commission employees and Department of Public Safety officers to enter the premises of a licensed racetrack to enforce the Texas Racing Act.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the laws of this state relating to racing will be enforced. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §3.03, which describes the power of entry onto association grounds.

#### §303.32. Power of Entry.

(a) A member or employee of the commission, a steward or judge [a commission investigator or other person authorized by the commission], a commissioned officer of the Department of Public Safety who is assigned to work on racing investigations, [or] a peace officer of the local jurisdiction in which the association maintains a place of business, or another person authorized or designated by any such person may enter an office, a racetrack, any area on association grounds, or any similar area or other place of business of an association at any time to enforce or administer the Act or commission rules.

(b) An association or an officer, employee, or agent of an association may not refuse or deny a request to enter under [that refuses access required by] this section and may not hinder a person who is conducting an investigation under or attempting to enforce or administer the Act or commission rules [is subject to disciplinary action by the commission].

[(c) A commissioned officer of the Department of Public Safety who is assigned to work on racing investigations may inspect any and all areas of an association's grounds to check for violations of rules of the commission.]

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116147 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 794-8461

#### • 16 TAC §303.38

The Texas Racing Commission proposes an amendment to §303.38, concerning cooperation with peace officers. The amendment clarifies the responsibility of the commission, its employees, and its licensees to cooperate with law enforcement entities in the enforcement of the laws relating to racing.

Paula Cochran Carter, general counsel, for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the laws of this state relating to racing will be enforced. There will be no effect on small businesses as a result of enforcing the

section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §3.11, which requires commission cooperation with peace officers.

**§303.38. Cooperation with Peace Officers and Other Enforcement Entities.** The commission, its employees, and its licensees shall cooperate with all district attorneys, criminal district attorneys, county attorneys, the [Texas] Department of Public Safety, the attorney general, and all peace officers who are [in] enforcing a criminal law related to racing, the Act, or a [and the rules of the] commission rule.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116157 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 794-8461

### Subchapter F. Licensing Persons with Criminal Backgrounds

#### • 16 TAC §303.202

The Texas Racing Commission proposes an amendment to §303.202, concerning guidelines. The amendment clarifies the commission's guidelines regarding the licensing of individuals who have been convicted of criminal homicide.

Paula Cochran Carter, general counsel, for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the licensees participating in pari-mutuel racing are of the qualified to perform the duties of a licensee. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and Article 6252-13d, which requires commission to issue guidelines regarding the licensing of persons with criminal backgrounds.

**§303.202. Guidelines.** The offenses that the commission considers are directly related to a person's present fitness to perform the duties and responsibilities associated with a license issued by the commission are [include]:

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

(4) a criminal homicide offense, as defined by Penal Code, Chapter 19 [murder];

(5)-(10) (No change.)

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116146 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 794-8461

### Chapter 307. Practice and Procedure

#### Subchapter C. Proceedings by Stewards and Racing Judges Appeals to Commission

#### • 16 TAC §307.261

The Texas Racing Commission proposes an amendment to §307.261, concerning appeal to the commission. The amendment clarifies the procedure for filing an appeal from a ruling by the stewards or racing judges.

Paula Cochran Carter, general counsel, for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the administrative processes of the commission are efficient and effective. There will

be no effect on small businesses as a result of enforcing the section. Because the section would require the payment of a fine before the filing of an appeal, there is an anticipated economic cost to person who are required to comply with the section as proposed. The exact amount of the economic will vary, depending on the amount of the fine imposed by the stewards or racing judges.

Comments on the proposal may be submitted before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §3.08, which provides that decisions by stewards and racing judges are appealable to the commission in accordance with the Administrative Procedure and Texas Register Act; and Texas Civil Statutes, Article 6252-13a, §4, which authorize the commission to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

#### *§307.261. Appeal to the Commission.*

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

(e) If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the **person shall pay the fine in accordance with these rules. If** [ruling regarding the fine is automatically stayed until:]

[(1) the commission acts on the ruling; or]

[(2)] the appeal is [otherwise] disposed of in favor of the **appellant, the commission shall refund the amount of the fine.**

(f) (No change.)

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116145 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 794-8461



## Chapter 309. Operation of Racetracks

### Subchapter C. Greyhound Racetracks

#### Operations

##### • 16 TAC §309.352

The Texas Racing Commission proposes an amendment to §309.352, concerning Texas preference. The amendment corrects a technical error regarding the requirements for a greyhound racetrack in contracting with kennel owners.

Paula Cochran Carter, general counsel, for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the rules of the commission are technically correct. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §10.06, which states the requirements for contracting with kennel owners.

##### *§309.352. Texas Preference.*

(a) In contracting with kennel owners for **kennel contracts** [a racetrack], an association shall ensure that at least 50% of the kennels with whom the association contracts are wholly owned by Texas residents.

(b) (No change.)

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116156 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 794-8461



## Chapter 311. Conduct and Duties of Individual Licensees

### Subchapter A. General Provisions

##### • 16 TAC §311.6

The Texas Racing Commission proposes an amendment to §311.6, concerning influence of race prohibited. The amendment clarifies the prohibition against the possession or use of a device designed to increase or decrease the speed of a horse, other than an ordinary riding whip.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that pari-mutuel racing is conducted fairly, humanely, and with the utmost integrity. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of a race.

##### *§311.6. Influence of Race Prohibited.*

(a) A licensee may not improperly influence or conspire or attempt to improperly influence the results of a race.

(b) A licensee may not possess on association grounds or use a device designed to increase or decrease the speed of a horse other than an ordinary riding whip.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116155 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: January 27, 1992

### • 16 TAC §311.7

The Texas Racing Commission proposes an amendment to §311.7, concerning inhumane treatment. The amendment deletes the reference to the possession or use of a device designed to increase or decrease the speed of a horse, other than an ordinary riding whip, because this prohibition has been moved to another section of the commission's rules.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the rules of the commission are internally consistent and nonrepetitive. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of a race.

#### §311.7. Inhumane Treatment.

[(a)] A licensee may not subject a horse or greyhound to cruel or inhumane treatment or, through act or neglect, subject a horse or greyhound to unnecessary suffering.

[(b)] A licensee may not possess on association grounds or use a device designed to increase or decrease the speed of a horse other than an ordinary rider whip.

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

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TRD-9116154 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

### • 16 TAC §311.10

The Texas Racing Commission proposes an amendment to §311.10, concerning conduct. The amendment clarifies the responsibilities of the commission's licensees regarding fire safety in the stable or kennel area, security in the stable or kennel area, and the decision-making process by stewards or racing judges.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the participants in pari-mutuel racing are qualified and that pari-mutuel racing is safe for the participants. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

#### §311.10. Conduct.

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

(c) A licensee shall use reasonable diligence and precaution to prevent fires in the stable or kennel area. A licensee may not smoke in a stall, near greyhound crate, in a feed room or hay storage area, or under a shed row. A licensee may not leave an unattended electrical appliance plugged into an outlet in the stable or kennel area. A licensee may not leave an electrical outlet or electrical cord within the reach of a race animal. A licensee may not lock a stall that is occupied by a horse. A licensee may not possess, keep, or maintain, in the stable or kennel area:

(1) an open fire or an oil or gas lamp; or

(2) a flammable material, such as cleaning fluid or solvent.

(d) A licensee may not enter or attempt to enter the stable or kennel area except through the designated entrances and or attempt to assist another person in entering the stable or kennel area except through the designated entrances and on showing a valid license badge or temporary pass.

(e) A licensee may not interfere with, attempt to interfere with, or conspire with another to interfere with any decision-making process of the stewards or racing judges including, but not limited to, formal and informal disciplinary hearings.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116153 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

### • 16 TAC §311.16

The Texas Racing Commission proposes an amendment to §311.16, concerning contraband. The section describes what the commission considers to be contraband and subject to seizure by the commission and law enforcement authorities

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that pari-mutuel racing is safe for the participants and is of the utmost integrity. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

#### §311.16. Contraband.

(a) The following items are contraband on a racetrack or association grounds:

(1) a criminal instrument related to racing under the Act;

(2) an electrical shocking de-

lia designed to increase or decrease the speed of a race animal or to unnaturally depress, stimulate, or excite a race animal;

(3) a device prohibited under §319.10 of this title (relating to Devices and Substances Prohibited), including a hypodermic syringe or hypodermic needle;

(4) a deadly weapon prohibited under §311.11 of this title (relating to Weapons Prohibited); and

(5) a drug, chemical, or other substance prohibited under:

(A) §319.3 of this title (relating to Medication Restricted);

(B) §319.7 of this title (relating to Medication Labelling);

(C) §319.10 of this title (relating to Devices and Substances Prohibited); or

(D) §319.14 of this title (relating to Possession of Controlled Substances).

(b) No person may possess an item of contraband at any time while on a racetrack or association grounds. It is an affirmative defense to a rule violation under this subsection that:

(1) commission rules expressly state the item was not contraband; or

(2) the possession was expressly authorized on a racetrack or association grounds by the Act or commission rules.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116152 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

## Subchapter B. Specific Licensees

### Licensees for Horse Racing

#### • 16 TAC §311.159

The Texas Racing Commission proposes an amendment to §311.159, concerning conduct in stable area. The section describes the responsibilities of licensees participating in horse racing regarding their conduct in the stable area.

Paula Cochran Carter, general counsel, for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that the pari-mutuel racing is safe for the participants. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

#### §311.159. Conduct in Stable Area.

(a) An individual licensee may not sleep in the stable area of an association's grounds except in a facility provided for that purpose by the association in accordance with commission rules.

(b) An individual licensee may not possess, keep, or maintain a pet in the stable area of an association's grounds unless:

(1) the pet is confined and prevented from going at large on association grounds; and

(2) the pet is annually vaccinated against rabies.

(c) An individual licensee shall wear a properly fastened helmet, of a type approve by the commission, at all time that the individual is mounted on a horse.

(d) An individual licensee may not hold a horse in a starting gate unless the licensee wears properly fastened headgear, of a type approved by the commission.

(e) Except as otherwise provided by this subsection, an individual licensee may not operate a motor vehicle in the stable area during training hours. This subsection does not apply to:

(1) a person who has power of entry under the Act, §3.03;

(2) the stewards;

(3) security personnel employed by the association;

(4) the commission veterinarian;

(5) the racing secretary;

(6) a veterinarian licensed by the commission;

(7) a trainer;

(8) a jockey's agent at a Class 1 racetrack; or

(9) a farrier.

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

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TRD-9116151 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

## Licensees for Greyhound Racing

#### • 16 TAC §311.171

The Texas Racing Commission proposes an amendment to §311.171, concerning kennel owners. The section describes the responsibilities of kennel owners regarding the use of greyhounds that have been trained with live lures.

Paula Cochran Carter, general counsel, for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that pari-mutuel racing is humane for racing is humane for racing greyhounds. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §6.06, which authorizes the commission to adopt rules relating to the operation of racetracks.

#### §311.171. Kennel Owners.

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

(I) A kennel owner may not permit a greyhound to be kenneled on asso-

ciation grounds, enter a greyhound in a race, or permit a greyhound to be entered in a race if the kennel owner knows or can reasonably be expected to know that they greyhound was trained with a live lure. Before permitting a greyhound to enter a kennel on association grounds, a kennel owner shall use reasonable diligence to determine the training methods used for the greyhound.

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

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TRD-9116150 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

## Chapter 313. Officials and Rules of Horse Racing

### Subchapter A. Officials

#### General Provisions

##### • 16 TAC §313.4

The Texas Racing Commission proposes an amendment to §313.4, concerning approval of officials. The section describes the procedure for obtaining and rescinding commission approval of officials at horse racetracks.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that pari-mutuel racing is supervised by qualified officials who are of the utmost integrity. There will be no effect on small businesses as a result of enforcing the section. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §3.07, which authorizes the commission to approve all racetrack officials.

##### §313.4. Approval of [Association] Officials.

(a) Each individual who is designated as an official for [The commission shall approve all association officials to serve at] a race meeting must be approved by the executive secretary before the individual begins acting in an official capacity.

(b) Not later than the 30th day before the first day of a race meeting, an association shall submit to the executive secretary a document containing the name of each individual appointed to serve as an [association] official at the race meeting. The executive secretary [commission] may require the association to submit a brief job description for each of the [association] officials for approval by the commission.

(c) The executive secretary may rescind that the approval of an official if the executive secretary determines that:

(1) the official has violated the Act or a rule of the commission;

(2) the official has not fulfilled the duties of the position for which the official was appointed; or

(3) the official has engaged in conduct that is inconsistent with the duties of the official and that is not in the best interests of racing.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116149 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

## Chapter 319. Veterinary Practices and Drug Testing

### Subchapter A. General Provisions

##### • 16 TAC §319.11

The Texas Racing Commission proposed an amendment to §319.11, concerning powers of inspection, examination, and search and seizure. The amendment clarifies the procedures by which the commission conduct searches of persons and property involved in pari-mutuel racing and seize contraband and clarifies the extent of the consent to searches given by occupational licensees when applying for a license from the commission.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 assurance that pari-mutuel racing is safe and humane for the race animals and is conducted in a manner that is fair for the wagers and that the illegal influencing of the outcome of a race is minimized or eliminated. There will be no fiscal implications for 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules to administer the Texas Racing Act and to regulate racing with wagering; and §14.03, which authorizes the commission to adopt rules to prohibit the illegal influencing of the outcome of a race.

##### §319.11. Powers of Inspection, Examination, and Search and Seizure.

(a) A member or employee of the [The] commission, a steward [the stewards] or racing judge [judges], an officer of an association, a commissioned officer of the Department of Public Safety who is assigned to work on racing investigations, or another [a] person authorized or designated by any such person [the commission, stewards or racing judges, or an association] may enter an office, a racetrack, any area on association grounds, or any similar area or other place of business of an association at any time to inspect, examine, or search an individual's person and possessions in that area and to seize any contraband or other item that is found, which may be evidence of a rule violation or a criminal offense [to check for violations of the Act or a rule of the commission].

(b) Any peace officer may assist a person acting under the authority of this section.

(c) By applying for, accepting, or holding a license under the Act, an [(b) An] individual licensee[, on accepting a license from the commission,] consents to an inspection, examination, or [a] search conducted under this section of the licensee's person and possessions while on premises covered by this section and to the seizure of any contraband or other item that is found which may be evidence of a rule

violation or a criminal offense [prohibited hypodermic syringes, hypodermic needles, prohibited drugs, chemicals, or other substances, or any electrical device or other device that might have the effect of unnaturally depressing, stimulating, or exciting a race animal]. Consent described in this subsection is not:

(1) effective for a search outside the premises covered by this section;

(2) effective for a search conducted at a time when no valid license was in effect, unless at the time of the search the licensee who was searched claimed the existence of a valid license as authority to enter or remain in an area covered by this section;

(3) limited in effect to a prerace or postrace search or a search on a race or meeting day; or

(4) limited in effect to a search based on reasonable cause, reasonable suspicion, reasonable grounds, probable cause, or any similar legal standard.

(d) By applying for, accepting, or holding a temporary pass to enter or remain on any restricted area of association grounds, an individual who is not a licensee consents to a search conducted under this section of the individual's person or possessions in that area and to the seizure of any contraband or other item that is found which may be evidence of a rule violation or a criminal offense. Consent described in this subsection is not:

(1) effective for a search outside the restricted area covered by this subsection;

(2) effective for a search conducted at a time when no temporary pass was in effect, unless at the time of the search the individual who was searched claimed the existence of a valid pass as authority to enter or remain in the restricted area covered by this subsection;

(3) limited in effect to a prerace or postrace search or a search on a race or meeting day; or

(4) limited in effect to a search based on reasonable cause, reasonable suspicion, reasonable grounds, probable cause, or any similar legal standard.

(e) A licensee, an officer, employee, or agent of an association, or holder of a temporary pass may not refuse or deny a request by a person acting under the authority of this section to enter, inspect, examine or search any property that is within an area on association grounds and to seize any contraband or other item that is found which may be evidence of a rule violation or a criminal offense.

(f) An association shall post a sign at each entrance to, but outside of, any restricted area of association grounds that gives conspicuous notice of at least the following:

(1) the consent to search given by a licensee under this section;

(2) the consent to search given by a nonlicensee under this section;

(3) the felony criminal consequences for refusing or denying a request by a person acting under the authority of this section to inspect, examine, or search any property that is within a restricted area and to seize any contraband or other item that is found which may be evidence of a rule violation or a criminal offense; and

(4) the fact that entry into the restricted area of association grounds is forbidden except for a person holding a credential or temporary pass or for another person expressly permitted to enter under the Act or commission rules.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116144

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

#### ◆ ◆ ◆ • 16 TAC §319.12

The Texas Racing Commission proposes an amendment to §319.12, concerning cooperation required. The section clarifies the duties of the commission employees and licensees to cooperate with law enforcement agencies regarding the investigation or prosecution of a violation of the Texas Racing Act or a commission rule regarding illegal medication or possession of contraband.

Paula Cochran Carter, general counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Carter 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 is the assurance that pari-mutuel racing is safe for the participants and conduct fairly for the benefit of the patrons. There will be no effect on small businesses as a result of enforcing the amendment. 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 before February 1, 1992, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and to administer the Texas Racing Act; and §14.03, which authorize the commission to adopt rules to prohibit the illegal influencing of the outcome of a race.

**§319.12. Cooperation Required.** A licensee, an [An] association, and each officer, employee, or agent of an association shall cooperate fully with the commission, the Department of Public Safety, or other law enforcement agency in the investigation or prosecution of a violation of the Act or commission rules [of the commission] regarding [prohibited drugs, chemicals, or other substances and drug-related] contraband and any other item which may be evidence of a rule violation or a criminal offense.

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

Issued in Austin, Texas, on December 9, 1991.

TRD-9116148

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

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For further information, please call: (512) 794-8461

#### ◆ ◆ ◆ TITLE 22. EXAMINING BOARDS

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

#### Chapter 163. Examinations Required by the Board for Licensure

#### ◆ ◆ ◆ • 22 TAC §163.3

The Texas State Board of Medical Examiners proposes an amendment to §163.3, concerning examinations required by the board for licensure as an M.D. or D.O. The board recently voted to accept national boards as a means for licensure in Texas. The amendment is proposed to implement that decision.

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

There will be no local employment impact.



Pat Wood, secretary to the executive director, 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 enable physicians to be licensed on the basis of national board examination. 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 Pat Wood, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

### *§163.3. Examinations Required by the Board for Licensure.*

(a) Applicants for licensure by examination must have met one of the following examination requirements.

(1) an applicant must have passed USMLE with a score of 75 or better on each step within seven years and must have passed the Texas Medical jurisprudence examination; or

(2)[(1)] Initially, an applicant must sit for Component I of the FLEX or Component I and II of the FLEX.] an applicant must have passed FLEX with a score of 75 or better on each component within seven years between June 1985 and June 1994 and must have passed the Texas medical jurisprudence examination; or

(3)[(2)] an applicant must have passed FLEX in one sitting with a 75% weighted average prior to June 1985 and must have passed the Texas medical jurisprudence examination; or

(4)[(3)] an applicant must have passed the Texas state board examination prior to January 1, 1977; or[.]

(5) an applicant must have passed the National Board of Medical Examiners examination and must have passed the Texas medical jurisprudence examination; or

(6) an applicant must have passed the National Board of Osteopathic Medical Examiners examination and must have passed the Texas medical jurisprudence examination.

(b) Applicants for licensure by reciprocal endorsement must have met one of the following examination requirements:

(1) [An applicant must have passed the Texas medical jurisprudence ex-

amination, if] the applicant for licensure is a licentiate of a state, territory, or province based on passage of one of the following examinations:

(A) National Board of Medical Examiners examination [prior to January 1, 1978; or National Board of Medical Examiners examination after January 1, 1978, and passage of Day III of the FLEX prior to June 1985, Component II of the FLEX prior to June 1988, or SPEX];

(B) National Board of Osteopathic Medical Examiners examination [prior to January 1, 1978; or National Board of Osteopathic Medical Examiners examination after January 1, 1978, and passage of Day III of the FLEX prior to June 1985, or Component II of the FLEX prior to June 1988, or SPEX];

(C) Medical Council of Canada examination after January, 1978, and passage of Day III of the FLEX prior to June 1985, Component II of the FLEX [prior to June 1988], or SPEX; or

(D) state board of licensing examination prior to January 1, 1978; or state board licensing examination after January 1, 1978, and passage of Day III of the FLEX prior to June 1985, Component II of the FLEX [prior to June 1988], or SPEX; with the exception of Florida, Virgin Islands, Guam, and Tennessee Osteopathic Board;[,] or Puerto Rico after June 30, 1963;

(E) with exception being that applicants in subparagraphs (C) and [(A)-](D) of this paragraph who are required to pass Day III of the FLEX prior to June 1985, Component II of the FLEX [prior to June 1988], or SPX, are exempt from these examinations if they have obtained specialty certification or recertification by a board that is a member of the American Board of Medical Specialties or the Advisory Board for Osteopathic Specialists.

(2) [an applicant must have passed the Texas medical jurisprudence examination, if] he or she is a licentiate of a state, territory, or province based on the FLEX examination in one sitting with a 75% weighted average prior to June 1985;

(e) [an applicant must have passed the Texas medical jurisprudence examination if] he or she is a licentiate of a state, territory, or province based on FLEX (both components of which have been taken within a seven-year period) with a score of 75 or better on each component between June 1985 and June 1994;

(4) he or she is a licentiate of a state, territory, or province based on USMLE (all steps of which have been taken within a seven-year period) with a score of 75 or better on each step;

(5) all applicants for licensure in Texas must have passed the Texas medical jurisprudence examination.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116073

Homer R. Goehrs, M.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: January 27, 1992

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

## Chapter 165. Administration of Examinations

### • 22 TAC §165.1

The Texas State Board of Medical Examiners proposes an amendment to §165. 1, concerning administration of examinations. The board recently voted to accept USMLE as a means for licensure in Texas. The amendment is proposed to implement that decision.

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

There will be no local employment impact.

Pat Wood, secretary to the executive director, 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 enable physicians to be licensed on the basis of USMLE. 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 Pat Wood, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

### *§165.1. Examination Administration.*

(a) The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE), the federation licensing examination (FLEX), the special purpose examination (SPEX), and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

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

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

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

(g) A graduate of a medical school may sit for an [the] examination 14 month prior to the successful completion of the required graduate training program but will not be eligible for licensure until proof is presented to the board of having successfully completed the required graduate training.

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

(1) the application is complete, with the exception of the FBI fingerprint card report;

(2) the applicant has passed the USMLE Step 1 and USMLE Step 2 examinations with a grade of 75 on each step within the last seven years; and

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

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116074      Homer R. Goehrs, M.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: January 27, 1992

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

## Chapter 171. Institutional Permits

### • 22 TAC §171.1

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

The Texas State Board of Medical Examiners proposes the repeal of §171.1, concerning institutional permits. In order to expedite processing of Instructional Permit Applications, extensive rewrite of the section is felt necessary; therefore, repeal with simultaneous proposed new wording is presented.

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

There will be no local employment impact.

Pat Wood, secretary to the executive director, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the repeal of the rule will have no effect on the public, other than clarification by omission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

#### §171.1. Interns, Residents, or Fellows Permit.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116071      Homer R. Goehrs, M.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: January 27, 1991

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

The Texas State Board of Medical Examiners proposes new §171.1, concerning institutional permits. In order to expedite processing of institutional permit applications, extensive rewrite of the section is felt necessary; therefore, repeal with simultaneous proposed new wording is presented.

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

There will be no local employment impact.

Pat Wood, secretary to the executive director, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of rules and more efficient use of agency time. 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 Pat Wood, P.O. Box 13562, Austin, Texas 78711. A public hearing will be held at a later date.

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

#### §171.1. Institutional Permits.

(a) Institutional permits may be issued to postgraduate training programs approved by the Accreditation Council for Graduate Medical Education, American Osteopathic Association, or the Texas State Board of Medical Examiners for interns, residents, and postresidency fellows.

(1) An intern is a physician who is in a clearly defined and delineated first postgraduate year program.

(2) A resident is a physician who is in a specialized, clearly defined, and delineated postgraduate program.

(3) A postresidency fellow is a physician who is in a specialized, clearly defined, and delineated postresidency program for additional training in a medical specialty or subspecialty delivered in a program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or in a program approved by the Texas State Board of Medical Examiners.

(b) The executive director may, upon written request, approve training programs. If the executive director does not recommend approval, the program director may appeal to the full board for its consideration of the request.

(c) Applicants who have graduated from a medical school approved by the Accreditation Council for Graduate Medical Education, or American Osteopathic Association must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program; and

(2) certification by the director of medical education of the program that

the internship, residency, or fellowship meets the appropriate definition.

(d) Applicants who have graduated from a medical school outside the United States or Canada must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program;

(2) a notarized copy of medical school diploma or 5th Pathway Certificate;

(A) copies should be notarized as being a "true copy" of the original document. The Notary Public must sign, date, and affix his/her notary seal to the document;

(B) if the document is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a Government Official, Official Translation Agency, or a College or University Official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature;

(3) a notarized copy of a valid ECFMG document, or:

(A) proof of an unrestricted license from another state in the United States or Canada; or

(B) proof of citizenship in United States and residency of the State of Texas prior to entering medical school as provided in Texas Civil Statutes, Article 4437(g);

(4) certification by the director of medical education that the internship, residency, or fellowship program meets the appropriate definition; and

(5) certification by the director of medical education that the original medical school diploma, certified medical school transcript from each medical school, valid ECFMG document, and an original Dean's certification has been inspected.

(e) The board's executive director may, on a case by case basis, allow substitute documents where exhaustive efforts have been made to secure the required documents.

(f) Institutional permits are issued for a one year period and may be renewed up to seven times depending upon the requirements of the physician's specialty training program.

(g) Physicians holding an institutional permit must confine their practice of medicine to the designated teaching program. The permit may be cancelled if \$3.08 or any other provision of the Medical Practice Act is violated; or if the permit is used to practice medicine outside the teaching program.

(h) If the training is terminated for any reason other than illness or other reasons acceptable to the board, the permit is void and no additional permit will be issued.

(i) Denial of a permanent Texas license is grounds for revoking or not issuing an institutional permit.

(j) Failure of any hospital or medical institution to comply with these provisions shall be grounds for the denial of the institutional permit and any future permits for persons wishing to serve at that institution.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116072

Homer R. Goehrs, M.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: January 27, 1991

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

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 1. General Administration

##### Subchapter D. Effect of Criminal Conduct on Licenses

###### • 28 TAC §1.501, §1.502

The State Board of Insurance of the Texas Department of Insurance proposes amendments to 28 TAC §1.501 and §1.502, concerning the effect of criminal conduct on licensing of all persons licensed or seeking to be licensed by the Texas Department of Insurance. The proposed amendments to this section are necessary to implement legislation enacted by the 72nd Legislature, codified as the Texas Insurance Code, Article 21.07, 10A and Article 1.14A. These sections also implement the provisions of Texas Civil Statutes, Article 6525-13d, §4 and the amendments

to these sections are intended to give effect to and harmonize Texas Civil Statutes, Article 6252-13d, §4, and the Texas Insurance Code, Articles 21.07, §10A and 1.14A. Section 1.501 describes the purpose and scope of these rules and §1.502 describes the effect on licensure of criminal conduct of licensees, applicants, and corporate officials.

Jack Evins, deputy commissioner for licensing, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be no effect on local employment or local economy.

Mr. Evins 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 more effective regulation of licensees and the ability to disqualify licensees and applicants who should not be licensed and to revoke the licenses of licensees who should not continue to maintain their licenses due to felony convictions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposed sections may be submitted to Jack Evins, Deputy Commissioner for Licensing, Texas Department of Insurance, Mail Code 105-5A, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-1904.

The amendments are proposed under the Texas Insurance Code, Article 1.04, which authorizes the State Board of Insurance to issue rules in accordance with the laws of this state; Texas Civil Statutes, Article 6252-13d, which incorporate Article 6252-13c, and which require the filing of guidelines relating to the practice of a licensing authority in carrying out the provisions of former Article 6252-13c, now of Article 6252-13d; Texas Insurance Code, Article 21.07, §10A, which requires that a license may not be issued to applicants for a license as insurance agents who have been convicted of a felony involving moral turpitude or breach of a fiduciary duty and which allows the department to revoke the license of an insurance agent based upon such conviction; and Texas Insurance Code, Article 1.14A, which provides that the department may not issue a certificate of authority to an insurance

company if a corporate officer or a member of the board of directors of the company has been convicted of a felony involving moral turpitude or breach of a fiduciary duty and provides that the department may revoke the certificate of authority of an insurance company if a corporate officer or member of the board of directors of the company is convicted of a felony involving moral turpitude or breach of a fiduciary duty.

**§1.501. Purpose and Scope.** These sections are promulgated to implement Texas Civil Statutes, Article 6252-13d, §4 and the Texas Insurance Code, Article 21.07, §10A. These sections apply to all persons licensed by the Texas Department of Insurance (referred to as department in these rules) [State Board of Insurance] subject to the provisions of [to which] Texas Civil Statutes, Article 6252-13d, §4 [is applicable], and to insurance agents subject to the provisions of the Texas Insurance Code, Article 21.07, §10A, and insurance companies subject to the provisions of the Texas Insurance Code, Article 1.14A.

**§1.502. Effect of Criminal Conduct of Applicants, Licensees, and Corporate Officials on Licensure [Agents or Principals].**

(a) The Texas Department of Insurance [State Board of Insurance] considers it very important that licensees, all corporate officials, including corporate officers and members of boards of directors of insurance companies (referred to as corporate officials in these rules), and license applicants [candidates] and all corporate officials of license applicants be honest, trustworthy, and reliable. Accordingly, crimes involving moral turpitude, including, but not limited to, fraud, dishonesty, and the mishandling of funds are generally of prime importance in determining fitness for licensure.

(1) The special nature of the relationship between agents, insurance companies, other insurance-related entities, the corporate officials of such entities, and the public with respect to insurance and related businesses regulated by the Texas Department of Insurance, requires trust in and reliance upon such persons because of the complex and varied nature of insurance and insurance-related products which require citizens to place reliance on insurance and insurance-related licensees. In light of this special relationship, the matters specified in Texas Civil Statutes, Article 6252-13(c), §4(b) and (c), and described in subsection (b) of this section, will be considered by the Texas Department of Insurance in determining whether to grant, deny, suspend, or revoke any li-

cense under its jurisdiction.

(2) Where the legislature has set out specific criteria for any license, such specific criteria shall be considered by the Texas Department of Insurance in considering whether to grant, deny, suspend, or revoke such licenses. In the event of any conflict with these rules, those specific statutory criteria shall govern licensure under such statutes.

(3) The department, in considering the matters described in subsection (b) of this section, has determined that the serious nature of felony convictions involving crimes of moral turpitude or breach of fiduciary duty, bear such a strong relationship to the occupations which are licensed by the department, that special rules should apply to licensure of persons convicted of such crimes. The following rules, therefore, apply to persons convicted of felonies involving crimes of moral turpitude or breach of fiduciary duty.

(A) The department shall not issue a license to any applicant for a license as an insurance agent subject to Article 21.07, §10A, if the applicant has been convicted of a felony involving moral turpitude or breach of a fiduciary duty, except as provided in subparagraph (F) of this paragraph.

(B) The department shall not issue a certificate of authority to any applicant for a certificate of authority as an insurance company if a corporate official of the company has been convicted of a felony involving moral turpitude or breach of a fiduciary duty, except as provided in subparagraph (F) of this paragraph.

(C) The department shall not issue a license to any applicant for any license regulated by the department, other than a license as an insurance agent subject to Article 21.07, §10A, or a certificate of authority as an insurance company, if the applicant has been convicted of a felony involving moral turpitude or breach of a fiduciary duty, unless the commissioner of insurance finds that the other matters set out in subsection (b) of this section outweigh the serious nature of a felony conviction involving moral turpitude or breach of fiduciary duty when viewed in light of the occupation being licensed, except as provided in subparagraph (F) of this paragraph.

(D) The department shall, after notice and hearing, revoke the certificate of authority of an insurance company if a corporate official of the com-

pany is convicted of a felony involving moral turpitude or breach of a fiduciary duty, unless the other factors set forth in subsection (b) of this section outweigh the serious nature of the crimes involved when viewed in light of the special relationship between an insurance company and the public. The certificate of authority may not be reinstated except as provided in subparagraph (F) of this paragraph.

(E) The department shall, after notice and hearing, revoke the license of any licensee if the licensee is convicted of a felony involving moral turpitude or breach of a fiduciary duty, unless the other factors set forth in subsection (b) of this section outweigh the serious nature of the crimes involved when viewed in light of the special relationship between the licensee and the public. The license may not be reinstated except as provided in subparagraph (F) of this paragraph.

(F) A licensee or applicant whose application for issuance of a license has been denied or whose license has been revoked under subparagraph (D) or subparagraph (E) of this paragraph, may petition the commissioner of insurance for issuance or reinstatement of the license under the following conditions.

(i) The licensee or applicant may not make a petition for issuance or reinstatement of a license before a date five years after the date of final conviction or, if the licensee, applicant, or corporate official of the licensee or applicant has been sentenced to prison or probation, five years after the date the sentence or probation terminates.

(ii) A petition for issuance or reinstatement of a certificate of authority may be made at any time after the convicted corporate official is no longer a corporate official of the company.

(iii) The petition for issuance or reinstatement of a license must set forth the following information:

(I) the date of final conviction and/or the date the sentence or probation terminated; and

(II) the reasons why the petitioner believes the license should be issued or reinstated.

(iv) The petition should be filed with the associate commissioner for license and investigations.

(v) The office of the associate commissioner for license and investigations may order an investigation of the facts surrounding the initial failure to

issue the license or revocation of the license or any other matters deemed relevant to the petition.

(vi) After notice and hearing, the commissioner of insurance (referred to in these rules as the commissioner) shall grant the petition if the petitioner demonstrates that it would be in the public interest and that justice would be served if the license was issued or reinstated.

(vii) In determining whether it would be in the public interest and that justice would be best served if the license were to be issued or reinstated, the commissioner shall consider:

(I) those factors set forth in subsection (b) of this section.

(II) any other matters the commissioner deems relevant to the issuance or reinstatement of the license.

[(1)] These crimes relate to the special nature of the relationship between agents or principals and the public in respect to the insurance and related businesses regulated by the State Board of Insurance. The public necessarily reposes a great deal of trust in and reliance upon such persons because of the complex and varied nature of insurance and related products. It is therefore important that such a relationship not be undermined, that agents and principals be morally fit, and that the public reputation of agents and principals in general be enhanced.]

[(2)] (4) The same factors and crimes are also important respecting the various licensees regulated under the State Fire Marshal's Office. Fire detection and fire protection systems and devices are often of a technical nature. Fire detection and fire protection systems and equipment are often installed, serviced and maintained during non-working hours. Moreover, the manufacturing, storing, and selling or fire-works requires numerous special precautions to maintain a safe environment for the licensees and the public. Honesty, trustworthiness, and reliability are therefore of prime importance in determining fitness for licensure.

(b) The matters specified in Texas Civil Statutes, Article 6252-13c, §4(b) and (c), will be considered by the **Texas Department of Insurance** [State Board of Insurance] in determining whether to grant or deny, or suspend or revoke any person's license under its jurisdiction, as well as any and all other matters which constitute proper evidence under other law, including matters contained in any other valid rule or statute. The matters specified in Texas

Civil Statutes, Article 6252-13c, §4(b) and (c), recodified as Article 6252-13d, §1, are listed following.

(1) In determining whether a criminal conviction directly relates to the duties and responsibilities of the licensed occupation, the following matters shall be considered:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(2) In addition to the factors listed in paragraph (1) of this subsection, the following evidence shall be considered in determining the present fitness of a person who has been convicted of a crime:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person at the time of the commission of the crime;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(F) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the

convicted person.

(3) Article 6252-13d, §1 also provides that it shall be the responsibility of the licensee or applicant to the extent possible to secure and provide to the commissioner the information referred to in subparagraph (F) of this paragraph. The licensee or applicant shall also furnish proof that the licensee or applicant has maintained a record of steady employment and has supported the licensee's or applicant's dependents where applicable, and has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which licensee or applicant has been convicted.

(c) (No change.)

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116192

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

Earliest possible date of adoption: January 27, 1992

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

## ◆ ◆ ◆ Subchapter I. Disclosure of Guaranty Fund Nonparticipation

### • 28 TAC §1.1001

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to 28 TAC §1.001, concerning disclosure of guaranty fund nonparticipation. The proposed amendment is necessary to comply with §11.08, Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, which amends Article 21.28-E, Insurance Code, to exempt fidelity, surety and guaranty bonds from the guaranty fund disclosure requirement. The proposed amendment adds to 28 TAC §1.1001(g) which specifies that the disclosure notice is not applicable to fidelity, surety or guaranty bonds.

Fabian Gomez, director of title and bond, has determined that for the first five year period the new 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. Gomez 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 the adoption of this section is effectuating the legislative intent by exempting fidelity, surety and guaranty bonds from the disclosure requirement. There is no anticipated cost to small businesses. There is no anticipated cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Fabian Gomez, Director of T Title and Bond, Mail Code 104-1C, P. O. Box 149104, Austin, Texas 78714-9104

This amendment is proposed under Texas Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine policy and rules in accordance with the laws of this state; and under Insurance Code, Article 21.28-E(b), which authorizes and requires the State Board of Insurance to administer statutory provisions and promulgate statements that must be used by insurers to comply with 21.28-E, which requires disclosure of guaranty fund nonparticipation.

*§1.1001. Disclosure of Guaranty Fund Nonparticipation*

(a) -(f) (No change.)

(g) **Fidelity, surety, and guaranty bonds delivered or issued for delivery in this state on or after September 1, 1991, need not bear the disclosure notice required by subsection (a) of this section.**

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116193 Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: January 27, 1992

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part X. Texas Water Development Board

#### Chapter 355. Research and Planning Fund

## Subchapter A. General Research and Planning

### • 31 TAC §355.10

The Texas Water Development Board (the board) proposes an amendment to §355.10, concerning funding limitations for grants for regional and flood control planning under the research and planning fund. Section 355.10 is amended by adding subsections (e) and (f). Section 355.10(e) allows the board the implement regional planning financing of projects in areas outside incorporated municipalities where residents are not connected to centralized water or wastewater systems, where the Texas Department of Health (the department) or its successor has determined that the drinking water supply fails to meet department criteria for a community water system and that a nuisance dangerous to the public health and safety exists resulting from water supply or sanitation problems in the area. The board was appropriated funds Rider Number 8, of the board's General Appropriations Bill (House Bill 1, 72nd Legislature, 1991, First Called Session) to finance water and wastewater projects in these areas.

Section 355.10(f) allows the board to develop and implement a basin-wide flood control program for the Sabine River Basin and a study of a flood control program for the Salt Creek portion of the Trinity River Basin. The board was appropriated funds Rider Number 11, of the board's General Appropriations Bill (House Bill 1, 72nd Legislature, 1991, First Called Session) to provide a 100% grant for required studies to be done in conjunction with the Sabine River Authority, the Trinity River Authority, and recognized regional or county associations.

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

Ms. Morgan also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be simplification of the application procedure for the board's financial assistance programs and a resulting increase in the number of projects financed by the board funding. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

The agency has determined there will be no possible impact on local economies.

The amendment is proposed under the Texas Water Code, §6.101 and the Texas Water Code, Chapter 15, Subchapter F, §15.403, which require the board to adopt rules necessary to carry out the power and duties of the board and of various programs of the research and planning fund.

#### *§355.10. Funding Limitations.*

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

(e) **Grant for regional planning**

pursuant to the provisions in Rider Number 8, Emergency Financial Assistance, General Appropriations Bill, (House Bill 1, 72nd Legislature, 1991, First Called Session), may be up to 100% of the total cost of the project.

(f) **Grants for flood control programs pursuant to the provisions in Rider Number 11, Emergency Financial Assistance, General Appropriations Bill, (House Bill 1, 72nd Legislature, 1991, First Called Session), shall be for 100% of the total cost of the required studies.**

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116181 Suzanne Schwartz  
General Counsel  
Texas Water Development  
Board

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 463-7981

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 1. Central Administration

#### Practice and Procedure

### • 34 TAC §1.12

The Comptroller of Public Accounts proposes an amendment to §1.12, concerning motion to dismiss petition or set for hearing. The purpose of the amendment is to revise and clarify the language concerning motions to dismiss or set for hearing. In addition, the agency is given the option of selecting an oral hearing when the burden of proof is on the state.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government.

Dr. Plaut also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This section is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for 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 Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.



The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

#### §1.12. Motion to Dismiss Petition or Set for Hearing.

(a) The form enclosed with the position letter will offer the taxpayer three options.

(1) Motion to dismiss. The taxpayer may accept the conclusions of the position letter. The tax liability or refund will be calculated accordingly.

(2) Motion to set for written submission hearing. The taxpayer may reject some or all of the conclusions of the position letter and request that the contested issues be decided in a [on] written submission hearing by an administrative law judge. The parties will submit [written] documents and arguments in accordance with the notice of setting issued by the assigned administrative law judge, rather than appearing at an oral hearing.

(3) Motion to set for oral hearing.

(A) The taxpayer may reject some or all of the conclusions of the position letter and request that the contested issues be decided after [by] an oral hearing before an administrative law judge.

(B) A taxpayer who believes it will require more than two hours for the parties to present their cases [to hear its case] must file a written request for an extended hearing at the time the motion to set is filed, and state [set out] the reasons why more time will be required; however, any party may later request an extended hearing for good cause shown.

(b) In a Controlled Substances Tax case, the taxpayer will also be given the option of requesting an oral or written submissions hearing, but of holding the case in abeyance until the related criminal proceeding is concluded at the trial court level. An order of the trial court deferring adjudication will be deemed a conclusion of the trial court proceeding.

(c) The agency has the option of requesting an oral hearing in any case in which the burden of proof is on the state.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116087

Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: January 27, 1992

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

## Chapter 3. Tax Administration

### Subchapter O. Franchise Tax

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

The Comptroller of Public Accounts proposes the repeal of §§3.391-3.396, 3.398-3.400, 3.404, 3.409, 3.414, 3.415, and 3.417, concerning franchise tax. The sections are being repealed in order that they can be adopted under the Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter V.

Tom Plaut, chief revenue estimator, has determined that for the first five year period the repeals are in effect there will be no revenue impact on the state or local government as a result of enforcing or administering the repeals.

Dr. Plaut also has determined that there will be no cost or benefit to the public from the repeal of franchise tax rules which will be recodified into a format more easily used by the public. The repeals are promulgated under the Tax Code, Title 2, and do not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the repeals may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

#### • 34 TAC §3.391

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

#### §3.391. Accounting Methods.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116101

Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: January 27, 1992

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

#### • 34 TAC §3.392

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

#### §3.392. Optional Short Form Report.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116100

Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

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

#### • 34 TAC §3.393

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

#### §3.393. Special Reporting Procedures.

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

Issued in Austin, Texas, on December 18, 1991.

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

• 34 TAC §3.394

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.394. Foreign Corporation's Additional Tax Deposit (Trust Deposit).**

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116098

Martin Cherry  
Chief, General Law  
Section  
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Accounts

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

◆ ◆ ◆  
• 34 TAC §3.395

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.395. Liability Prior to Certificate of Authority.**

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

Issued in Austin, Texas, on December 18, 1991.

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Chief, General Law  
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• 34 TAC §3.396

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.396. Changes in Corporate Organization.**

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

Issued in Austin, Texas, on December 18, 1991.

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

◆ ◆ ◆  
• 34 TAC §3.398

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.398. Release of Liens.**

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

Issued in Austin, Texas, on December 18, 1991.

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

• 34 TAC §3.399

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.399. Franchise Tax Exemptions.**

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

Issued in Austin, Texas, on December 18, 1991.

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Martin Cherry  
Chief, General Law  
Section  
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Accounts

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

◆ ◆ ◆  
• 34 TAC §3.400

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

**§3.400. Corporations in Liquidation.**

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116093

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



• 34 TAC §3.404

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.404. *Stated Capital.*

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116092      Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
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For further information, please call: (512) 463-4028

• 34 TAC §3.409

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.409. *Franchise Tax Deposits (Prepayments).*

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

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

• 34 TAC §3.414

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.414. *Exemption for Certain Trade Show Participants.*

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116090      Martin Cherry  
Chief, General Law  
Section  
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• 34 TAC §3.415

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.415. *Methods for Estimating Oil and Gas Reserves.*

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116089      Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
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For further information, please call: (512) 463-4028

• 34 TAC §3.417

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

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.417. *Close and S Corporations.*

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116088      Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

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

Subchapter V. Franchise Tax

• 34 TAC §§3.541-3.543, 3.545-3.547, 3.550, 3.552-3.554, 3.559, 3.561, 3.566, 3.568, 3.570, 3.574

The Comptroller of Public Accounts proposes new §§3.541-3.543, 3.545-3.547, 3.550, 3.552-3.554, 3.559, 3.561, 3.566, 3.568, 3.570, 3.573, and 3.574, concerning franchise tax. The new sections replace 34 TAC, Subchapter Q, which is being repealed in order that it can be adopted under the Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter V.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the sections in effect there will be no significant revenue impact on the state or local government.

Dr. Plaut 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 from the recodification of franchise tax rules into a format more easily used by the public, and from the clarification of comptroller rules related to House Bill 11 and Senate Bill 543. These sections are adopted under the Tax Code, Title 2, and do not require a statement of fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the new sections may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new sections are proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

### §3.541. Exemptions.

#### (a) Application for exemption.

(1) It is the responsibility of each corporation that believes it is exempt from payment of franchise tax to furnish to the comptroller sufficient evidence to establish its exempt status. It is the duty of the taxpayer to place itself clearly within the exempt status desired. Doubts regarding exempt status are interpreted against the granting of the exemption.

(2) Except as indicated in subsection (e) of this section, each corporation must submit to the comptroller:

(A) a request for exemption in writing, indicating the particular provision of the Tax Code, Chapter 171, Subchapter B, under which exemption is claimed;

(B) a detailed statement of the corporation's past activities, if any, and its future plan of activities, both in relation to the manner in which the corporation proposes to implement the purposes clause in its articles of incorporation or certificate of authority;

(C) a copy of the articles of incorporation and, for a foreign corporation, a copy of the application for a certificate of authority; and

(D) any additional information the comptroller may require to make a determination whether the corporation is eligible for a franchise tax exemption.

(b) Actions by comptroller. Upon receipt of an application for exemption, the comptroller's representative will review the application and send the taxpayer a notification either granting the exemption, denying the exemption, or requesting additional information.

(1) If the exemption is granted, the exemption will be effective from the first date the corporation was eligible for exemption. However, refunds will not be made if the statute of limitations for issuing refunds has run. Also, if the first date the corporation was eligible for exemption was not the beginning of a privilege period, the

corporation must pay through the end of such privilege period.

(2) If the exemption is denied or revoked, the corporation may contest the denial or revocation by filing all reports due as though the corporation is not exempt and:

(A) paying all amounts of tax, penalty, and interest due and requesting a refund hearing pursuant to the Tax Code, §111.105;

(B) paying all amounts of tax, penalty, and interest due, accompanying the payment with a written protest, and filing suit for the recovery of amounts paid pursuant to the Tax Code, §112.052; or

(C) requesting that a deficiency determination be issued. If a deficiency determination is issued, a redetermination hearing may be requested pursuant to the Tax Code, §111.009.

#### (c) Qualification for exemption.

(1) All insurance, surety, guaranty, or fidelity companies that are subject to the annual gross premiums tax levied by the Insurance Code, §4.10 or §4.11, or the additional taxes on gross premiums levied under the Insurance Code, and that have not been exempted from the gross premiums taxes, are exempt from payment of the franchise tax regardless of whether any gross premiums taxes are actually paid in any given year. No other franchise tax exemption is allowed for any insurance company or surety, guaranty, or fidelity company.

(2) Those corporations organized for the exclusive purpose of promoting the public interest of any county, city, town, or other area within the state, must show that promotion of the public interest is the exclusive purpose of the corporation and not merely an incidental result. A corporation will not be considered to be promoting the public interest if it engages in activities to promote or protect the private, business, or professional interests of its members or patronage.

(3) A nonprofit corporation organized for the purpose of religious worship is an incorporated group of people associating for the primary purpose of holding, conducting, and sponsoring, according to the rites of the sect, religious worship. A corporation supporting and encouraging religion as an incidental purpose or an organization with the general purpose of furthering religious work or instilling its membership with a religious understanding does not qualify for a franchise tax exemption under the Tax Code, §171.058, unless all of its other purposes and activities are exempt under other provisions of the Tax Code, Subchapter B, or this section.

(4) A nonprofit corporation seeking a franchise tax exemption as organized for purely public charity will be required to supply evidence that the substantial portion of the corporation's activities are devoted to supplying aid and assistance to indigent or similarly deserving members of society. If a corporation engages in any substantial activity other than public charity, it will not be considered as having been organized for purely public charity. A corporation also will not be considered as having been organized for purely public charity if the public derives only an indirect benefit from the corporation's activities. A corporation is presumed to satisfy this definition if it devotes substantially all of its activity to the alleviation of poverty, disease, pain, and suffering by providing foods, drugs, treatment, shelter, clothing, or counseling to needy persons with funds derived at least in part from sources other than fees or charges for its services.

(5) A nonprofit corporation seeking a franchise tax exemption on the basis of having been organized for strictly educational purposes must show that it is devoted solely to systematic instruction with a regularly scheduled curriculum, a regular faculty, and regularly enrolled student body or students in attendance at a place where the educational activities are regularly carried on; or has activities consisting solely of presenting public discussion groups, forums, panels, lectures, or other similar programs. A corporation will not be considered as having been organized for strictly educational purposes if education is incidental to some other facet of the corporation's activities.

#### (d) Revocation of exemptions.

(1) Except as provided in paragraph (2) of this subsection, if at any time the comptroller has reason to believe that an exempt corporation no longer qualifies for exemption, the comptroller's representative will notify the taxpayer that its exempt status is under review. The comptroller's representative may request additional information necessary to ascertain the continued validity of the corporation's exempt status. If the comptroller determines that a corporation is no longer entitled to its exemption, notification to that effect will be sent to the corporation. The effective date of revocation is the date the corporation no longer qualified for the exemption.

(2) For nonprofit corporations granted an exemption under the Tax Code, §171.063, the revocation of the federal income tax exemption will automatically terminate the franchise tax exemption as of the effective date of the revocation of the federal tax exemption.

(e) Federal exemption. A corporation that meets the requirements of any

paragraph of this subsection may establish its exempt status merely by furnishing to the comptroller a copy of the exemption letter which it received from the Internal Revenue Service.

(1) a nonprofit corporation that has been exempted from the federal income tax under the provisions of the Internal Revenue Code, 501(c)(3), (4), (5), (6), or (7), as it existed on January 1, 1975; or

(2) for reports due on or after January 1, 1988, any corporation that has been exempted under the provisions of the Internal Revenue Code of 1986, §501(c)(2) and (25), if the entity or entities for which it holds title to property are either exempt from or not subject to the franchise tax; and

(3) for each annual period that begins on or after June 2, 1989, and for each initial period that on that date has six months or more before expiration and for any second period if the change applies to the initial period, a corporation that is exempted from federal income tax under the Internal Revenue Code of 1986, §501(c)(16).

(f) Solar energy device. For purposes of the Tax Code, §171.056, the term "solar energy device" includes, but is not limited to:

(1) devices used in the conversion of solar thermal energy into electrical or mechanical power;

(2) devices used in the photovoltaic (solar cell) generation of electricity;

(3) systems used in the heating of water and the heating and cooling of structures by use of solar collectors to gather the sun's energy; and

(4) heat pumps used as an integral part of a system designed to make the best combined use of solar energy and conventional heating.

(g) Exemption for certain trade show participants. See §3.542 of this title (relating to Exemption: Trade Show) for information concerning exemption under the Tax Code, §171.084.

(h) Exemption for recycling operation. A corporation engaged solely in the business of recycling sludge as defined by Texas Civil Statutes, Article 4477-7, Texas Solid Waste Disposal Act, §2, is exempt from franchise tax beginning with reports due on or after September 1, 1991.

(i) Exemption for Texas National Research Laboratory Commission Corporation. A corporation formed by the Texas National Research Laboratory Commission under the Government Code, §465.008(g), is exempt from franchise tax beginning with reports originally due on or after September 1, 1991.

### §3.542. Exemption: Trade Show.

(a) Trade show exemption. This section is concerned only with the exemption under the Tax Code, §171.084. See the Tax Code, §171.084, for the requirements for exemption for certain foreign corporations which participate in trade shows in Texas.

(b) Other exemptions. Section 3.541 of this title (relating to Exemptions) does not apply to the exemption under the Tax Code, §171.084.

(c) Notification to comptroller. Corporations need not apply for an exemption under the Tax Code, §171.084.

(1) If a foreign corporation has obtained a certificate of authority or has already notified the comptroller that it is doing business in Texas, the corporation must notify the comptroller in writing by the due date of the first report for which the corporation is exempt that the report and payment are not due because the corporation is exempt under the Tax Code, §171.084. After such notification, the corporation must notify the comptroller in writing only when the corporation no longer qualifies for exemption.

(2) If a foreign corporation has not obtained a certificate of authority and if the corporation has not notified the comptroller that it is doing business in Texas, the corporation must notify the comptroller in writing only when the corporation no longer qualifies for exemption under the Tax Code, §171.084. There is no need to apply for exemption as long as the corporation qualifies for the exemption.

(d) Solicitation periods. If the solicitation of orders is conducted during more than five periods during the business period upon which tax is based as set out in the Tax Code, §171.153 and §171.1532, the corporation does not qualify for exemption. A corporation may be exempt from one component of the franchise tax, but not exempt from the other component, because the business upon which the tax is based may be different for the two components. For example, assume the following corporations meet the requirements of the Tax Code, §171.084, except possibly the number of periods during which they solicit orders.

(1) A corporation with its fiscal year ending December 31, 1992, which filed a 1992 annual report, will not have to file and pay a 1993 annual report if it did not solicit orders for more than five periods during 1992.

(2) Assume a foreign corporation participated in its first trade show in Texas on April 1, 1992, and had not previously obtained a certificate of authority. It

also participated in trade shows in 1993 on January 1, March 1, May 1, June 1, August 1, and October 1. The corporation's fiscal year ends are December 31, 1992 and 1993. The corporation would be exempt for its initial report and payment (covering the tax periods from April 1, 1992-December 31, 1993) because it only solicited for one period from April 1, 1992-December 31, 1992 (i.e., the business upon which the initial period is based). The corporation would be required to file a 1994 annual report and pay tax, however, because it solicited for six periods from January 1, 1993-December 31, 1993 (i.e., the period upon which the 1994 annual report is based).

(e) One hundred twenty hours. A solicitation period may not exceed 120 consecutive hours. If the solicitation of orders is conducted during a single period of more than 120 consecutive hours, the corporation does not qualify for exemption. For example, a corporation which meets the other requirements of the Tax Code, §171.084, will meet the 120 hours requirement if the solicitation occurs Monday-Friday, but will not meet the 120 hours requirement if the solicitation occurs Monday-Saturday.

(f) Effective dates. The exemption provided by the Tax Code, §171.084, is effective for 1988 annual reports and initial reports originally due on or after January 1, 1988.

### §3.543. Deposit.

(a) Each foreign corporation transacting business in Texas is required to pay a trust deposit of \$500 in cash to the Comptroller of Public Accounts to insure the filing of all franchise tax reports and payment of all franchise tax, penalties, and interest that may be due by the corporation. The secretary of state will collect this deposit at the time the corporation applies for a certificate of authority.

(b) The following are exemptions from requirement.

(1) A foreign corporation doing business in Texas, which is required to pay franchise tax but is not required to and does not obtain a certificate of authority, does not have to pay the trust deposit.

(2) Foreign corporations that are exempt from franchise tax do not have to pay the trust deposit as long as the exempt status is in effect.

(3) A foreign corporation which has timely filed all franchise tax reports and paid all franchise tax for three consecutive reporting years does not have to pay the trust deposit as long as the corporation continues to timely file reports and pay the tax.

(c) A letter of exemption from the trust deposit requirement must be filed with the application for a certificate of authority in order to avoid paying the trust deposit.

(1) A corporation exempt under subsection (b)(2) of this section may obtain a letter of exemption from the comptroller by submitting proof of its exemption from franchise tax.

(2) A corporation exempt under subsection (b)(3) of this section that wishes to obtain a certificate of authority may obtain a letter of exemption from the comptroller by simply requesting a letter.

(d) The comptroller will automatically refund the trust deposit to corporations that do not owe any additional franchise tax, penalty, or interest and:

(1) have timely filed reports and paid the tax for three consecutive reporting years; or

(2) have dissolved, withdrawn, or merged out of existence.

(e) Except as indicated in subsection (d) of this section, a corporation must request in writing the refund of its trust deposit, stating in detail the reasons it believes it is due a refund. The comptroller may require additional information or documentation in support of the request. The request must be signed by an officer of the corporation.

(f) Refunds will be made payable to the corporation.

(g) No interest will be paid on the trust deposit.

#### **§3.545. Extensions.**

(a) A corporation will be granted an extension to file an annual report on or before the next November 15, if the corporation:

(1) requests the extension on or before May 15;

(2) requests the extension on a form provided by the comptroller; and

(3) remits with the extension request:

(A) 90% or more of the amount of tax reported as due on the report filed on or before November 15; or

(B) 100% of the tax paid in the previous calendar year.

(b) If the last report due for which a corporation paid a tax in the previous calendar year was an initial report, the payment provided in subsection (a)(3)(B) of this section must equal the greater of:

(1) an amount produced by multiplying the net taxable capital, as required to be shown on the initial report by 0.25% for the 1993 and later reports; or

(2) an amount produced by multiplying the net taxable earned surplus, as required to be shown on the initial report, by 4.5% for the 1993 and later reports.

(c) Any change in the amount of tax due after the end of the previous calendar year will not be considered when determining the amount of "tax paid in the previous calendar year," as this term is used in this section.

(d) Penalty and interest will be calculated based on the following due dates.

(1) If a corporation is granted an extension and pays at least 100% of the tax paid in the previous calendar year on or before May 15, then November 15 will be the due date for any additional tax due.

(2) If a corporation is granted an extension and pays on or before May 15, 90% or more of the tax which will be reported as due on or before November 15, then November 15 will be the due date for any additional amounts due.

(3) If a corporation timely requests an extension but does not qualify for an extension under paragraphs (1) or (2) of this subsection, then May 15 is the due date for 90% of the tax finally determined to be due and November 15 is the due date for 10% of the tax finally determined to be due.

(e) No extensions will be granted for annual franchise tax reports pursuant to the Tax Code, §111.057.

(f) Corporations seeking an extension for the 1992 annual report must remit with the extension request at least 90% of the amount of tax reported as due on the report filed on or before November 15, 1992. The option of paying 100% of the tax paid in the previous calendar year is not available for the 1992 annual report.

#### **§3.546. Taxable Capital: Nexus.**

(a) A foreign corporation is liable for the franchise tax if it is authorized to do business in this state or if it is actually doing business in this state.

(b) A corporation is doing business in this state, for the taxable capital component of the franchise tax, when it has sufficient contact with this state to be taxed without violating the United States Constitution. A corporation may be subject to the taxable capital component, but not subject to the earned surplus component, because of Public Law 86-272. See §3.554 of this title (relating to Earned Surplus: Nexus) for the nexus standards for the earned surplus component of the franchise tax.

(c) Some specific activities which constitute doing business in Texas are:

(1) contracting: performance of a contract in Texas regardless of whether the corporation brings its own employees into the state, hires local labor, or subcontracts with another;

(2) providing services:

(A) providing any service in Texas, regardless of whether the employees, independent contractors, agents, or other representatives performing the services reside in Texas;

(B) maintaining or repairing property located in Texas whether under warranty or by separate contract; or

(C) installing, erecting, or modifying property in Texas;

(3) inventory in the state: having an inventory in Texas or having spot inventory for the convenient delivery to customers, even if the bulk of orders are filled from out of state;

(4) solicitation: having employees, independent contractors, agents, or other representatives in Texas, regardless of whether they reside in Texas, to promote or induce sales of the foreign corporation's goods or services;

(5) dealings in real estate: holding, acquiring, leasing, or disposing of any property located in Texas;

(6) shows and performances: the staging of shows, theatrical performances, or other events within Texas;

(7) transportation:

(A) carrying passengers or freight (any personal property including oil and gas transmitted by pipeline) from one point in Texas to another point within the state, if pickup and delivery, regardless of origination or ultimate destination, occurs within Texas; or

(B) having facilities and/or employees, independent contractors, agents, or other representatives in Texas, regardless of whether they reside in Texas:

(i) for storage, delivery, or shipment of goods;

(ii) for servicing, maintaining, or repair of vehicles, trailers, containers, and other equipment;

(iii) for coordinating and directing the transportation of passengers or freight; or

(iv) for doing any other business of the corporation;

(8) franchisors: entering into one or more contracts with persons, corporations, or other business entities located in Texas, by which:

(A) the franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor; and

(B) the operation of a franchisee's business pursuant to such plan is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate;

(9) processing: assembling, processing, manufacturing, or storing goods in Texas;

(10) advertising: entering Texas to purchase, place, or display advertising when the advertising is for the benefit of another and in the ordinary course of business (e.g., the foreign corporation makes signs and brings them into Texas, sets them up, and maintains them);

(11) contracting for processing and shipment: sending materials to a Texas manufacturer, processor, repairer, or printer to be processed and stored in completed form awaiting orders for their shipment;

(12) foreign corporations as partners:

(A) acting as a general partner in a general partnership which is doing business in Texas;

(B) acting as a general partner in a limited partnership which is doing business in Texas (A foreign corporation which is a limited partner in a limited partnership is not doing business in Texas.);

(13) loan production activities: soliciting sales contracts or loans, gathering financial data, making credit checks, or performing other financial activities in Texas through employees, independent contractors, or agents, regardless of whether they reside in Texas;

(14) holding companies: maintaining a place of business in Texas or managing, directing, and/or performing services in Texas for subsidiaries or investee corporations;

(15) place of business: maintaining a place of business in Texas;

(16) federal enclaves: doing business in any area within Texas, even if the area is leased by, owned by, ceded to, or under the control of the federal government;

(17) consignments: having consigned goods in Texas;

(18) delivering: delivering into Texas items it has sold;

(19) leasing: leasing tangible personal property which is used in Texas.

(d) See §3.542 of this title (relating to Exemption: Trade Show) for information concerning exemption under the Tax Code, §171.084.

#### *§3.547. Taxable Capital: Accounting Methods.*

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 1988.

(b) Taxable capital application. The provisions of this section apply to the determination of gross receipts and surplus for taxable capital.

(c) General rules. The provisions of this subsection apply to both the generally accepted accounting principles (GAAP) and federal income tax methods.

(1) A corporation is required to use the same accounting method in computing gross receipts as it uses in computing surplus. Accounting method is the method of allocating the cost, benefit, or expense of an asset or liability to accounting periods.

(2) Regardless of any requirements or allowances under GAAP or the Internal Revenue Code, the calculation of franchise tax shall be performed in accordance with all applicable provisions of the Tax Code, Chapter 171, and related rules of this title.

(3) The financial condition as of the date required by the Tax Code, §171.153, must be determined by GAAP or other methods required by the Tax Code, Chapter 171, and related rules of this title, for all transactions through such date.

(4) The filing of a report using either the GAAP method or the federal income tax method shall constitute an irrevocable election of such method for the reporting period.

(5) A corporation's eligibility to report under the federal income tax method will determine whether it can change from the GAAP method to the federal income tax method, or vice versa, in a subsequent reporting period. Unless otherwise specified in this paragraph, a corporation cannot change accounting methods more often than once every four years without the written consent of the comptroller.

(A) A corporation that is eligible to report under the federal income tax method may change from the GAAP method to the federal income tax method once every four years. The corporation shall revert to the GAAP method within the next four years only if it loses its eligibility to use the federal income tax method.

(B) A corporation eligible to report under the federal income tax method may change from the federal income tax method to the GAAP method once every four years. The corporation cannot change back to the federal income tax method during the next four years.

(C) A corporation that loses its eligibility to report under the federal income tax method and has to report under the GAAP method may revert to the federal income tax method in a subsequent reporting period if it regains its eligibility to use that method.

(6) A corporation may not amend its franchise tax report after the due date of that report except as indicated in this paragraph. These provisions apply to those returns not barred by the statute of limitations.

(A) An amended report may be filed to correct an accounting error. An accounting error results from a mathematical mistake, a mistake in the application of accounting principles in effect on the date on which the tax is based, or an oversight or unintentional misuse of facts that existed on the date on which the tax is based. Subsequent events (i.e., events or transactions occurring after the date on which the report is based) will not be considered, even if the subsequent event provides additional evidence with respect to conditions that existed on the date upon which the tax is based.

(B) If the courts invalidate a statutory provision, rule, or agency policy, or if the comptroller invalidates a rule or agency policy, a corporation may amend reports in accordance with the court or administrative decision. Amendments filed under this subparagraph would not be restricted by any other provisions of this section.

(7) The cost method of accounting must be used for investments in other corporations. Cost is the original valuation of the investment under GAAP, without reduction for amortization of goodwill or any other write-downs. Beginning May 1, 1989, of any tax period, the investor's share of the pre-acquisition retained earnings of a subsidiary or investee may not be excluded

from the investment cost of that subsidiary or investee. Retained earnings represent the accumulated gains and losses of a corporation to date, reduced by any dividend distributed to shareholders and any amounts transferred to either capital stock or paid-in capital. The cost of an investee may be reduced by legally declared dividends of the investee to the extent that such dividends exceed the investee's post-acquisition earnings as determined under GAAP.

(8) Transfers of assets must be reported at the transferor's basis, as determined under the reporting method used for franchise tax, if allowed by GAAP. The transferor's basis may not, however, be reduced by unrealized, estimated, or contingent losses for the purposes of this subsection.

(d) Generally accepted accounting principles method.

(1) For purposes of this title, unless the context clearly requires otherwise, GAAP means those broad rules of accounting formally accepted by the American Institute of Certified Public Accountants (AICPA) or its designees through publication of a statement, interpretation, opinion, or research bulletin. If no such pronouncement has been published and is effective, such formal acceptance may be in the form of a written interpretation of a committee of the AICPA or its designee. In cases where no such interpretation has been published and is effective, formal acceptance may be through accepted industry accounting practices, publications of the Securities and Exchange Commission, publications of regulatory agencies, or any other means which may be shown by the taxpayer to indicate formal acceptance.

(2) A corporation may report its franchise tax using any allowable method without regard to accounting methods used for the general ledger, financial statements, or any other financial reports. However, factual assertions made for published financial statements will be presumed to be accurate unless the corporation or the comptroller can show the assertions are incorrect.

(3) If the majority of the voting stock of a corporation is acquired through a purchase, as described under GAAP, the assets and liabilities of the acquired corporation must be revalued based on the purchase price using GAAP (i.e., push-down accounting must be used).

(e) Federal income tax method.

(1) If a corporation is found to be ineligible to use the federal income tax method (e.g., as a result of an audit by the comptroller or the Internal Revenue Service), the corporation will be required to report its franchise tax using the GAAP method.

(2) In determining if taxable capital is less than \$1 million for purposes of the Tax Code, §171.109(c) and §171.112(c), or if a corporation qualifies to report under the Tax Code, §171.113, and elects to report using the federal income tax method, the corporation must apply the methods used in the last federal income tax return originally due on or before the franchise tax report is originally due, unless another method is required under a specific provision of this title or the Tax Code, Chapter 171.

(3) Income exempt for federal income tax purposes must be included in surplus and receipts based on the same method used for similar items on the federal income tax return. Expenses which are non-deductible for federal income tax purposes may be excluded from surplus, if they are allowable for franchise tax purposes, based on the same method used for similar items on the federal income tax return.

(f) Temporary credit claim. If a corporation claims a credit under the Tax Code, §171.111, it must use the same GAAP method in computing taxable capital that is used in computing the credit. If the credit is claimed, the corporation may not use the federal income tax method in whole or in part in computing taxable capital.

#### *§3.550. Taxable Capital: Stated Capital.*

(a) For franchise tax purposes "stated capital" has the same meaning as defined in Texas Business Corporation Act. Texas Business Corporation Act, Article 1.02, defines "stated capital" as the sum of:

(1) the par value of all shares of the corporation having a par value that have been issued;

(2) the consideration fixed by the corporation in the manner provided by the Texas Business Corporation Act, Article 2.15, for all shares of the corporation without par value that have been issued, except such part of the consideration that is actually received therefor (which part must be less than all of that consideration) that the board by resolution adopted no later than 60 days after the issuance of those shares may have allocated to surplus; and

(3) such amounts not included in paragraphs (1) and (2) of this subsection as have been transferred to stated capital of the corporation, whether upon the payment of a share dividend or upon adoption by the board of directors of a resolution directing that all or part of surplus be transferred to stated capital, minus all reductions from such sum as have been effected in a manner permitted by law.

(b) Treasury shares are included in stated capital until the shares are cancelled

and restored to the status of authorized but unissued shares in accordance with the laws of the state in which a corporation is incorporated. See §3.551 of this title (relating to Taxable Capital: Surplus) for an explanation of how treasury shares affect surplus.

(c) Redeemable preferred stock is included in stated capital, unless it is debt.

#### *§3.552. Taxable Capital: In Process of Liquidation.*

(a) A corporation in the process of liquidation is required to pay the taxable capital component of the franchise tax only upon its issued capital stock, less liquidating dividends actually paid to the stockholders. Both the president and secretary must, however, execute and file with each tax report filed during the period of liquidation an affidavit stipulating that the corporation is in a bona fide state of liquidation and also stating the amount of issued capital stock and the amount and date(s) of liquidating dividends actually paid to the stockholders. There also must be filed with the first tax report due after entering into the state of liquidation a copy of the plan of liquidation as adopted and ratified by a majority vote of the stockholders. A corporation may gain the benefits of the reduced taxable capital for an annual report if it enters a bona fide state of liquidation prior to January 1 of the reporting year. A corporation may gain the benefits of the reduced taxable capital for an initial report if it enters a bona fide state of liquidation prior to the first anniversary date of its charter or doing business in Texas or obtaining a certificate of authority, whichever one is applicable. If liquidating dividends paid prior to January 1 or the first anniversary date of any reporting year exceed the amount of issued capital stock, the corporation thereafter will have zero for the taxable capital component of the franchise tax.

(b) The terms "process of liquidation" and "bona fide state of liquidation" do not include the dissolution of a corporation by merger or consolidation with another corporation. The terms mean that the corporation in good faith has begun liquidating for the purpose of winding up its business affairs and terminating its legal existence. If the corporation does not terminate its business affairs and dissolve the corporation in accordance with the plan of liquidation, the corporation shall be liable for the difference in the amount of tax reported and paid pursuant to the plan of liquidation and the amount of tax that otherwise should have been reported and paid, plus applicable penalties and interest on such difference.

#### *§3.553. Taxable Capital: Oil and Gas Reserves.*

(a) The provisions of this section apply only to the computation of taxable capital.

(b) Corporations with \$1 million or more in taxable capital must choose one of the following four methods for estimating the volume of oil and gas reserves to be used in amortizing intangible drilling costs for franchise tax reports originally due on or after January 1, 1988.

(1) Reserves per Securities Exchange Commission reporting. The estimates of reserves used by the corporation in complying with Securities Exchange Commission (SEC) Regulation SX 210.4-10, or a subsequent regulation which supersedes this regulation.

(2) Evaluation by registered engineer. An evaluation of the volume of reserves performed by a person who is an engineer registered with the State Board of Registration for Professional Engineers under Texas Civil Statutes, Article 3271a, or under a comparable law of the jurisdiction in which the property being evaluated is located, and who is proficient in petroleum engineering.

(3) Volume per ad valorem valuation.

(A) The volume of reserves calculated for ad valorem tax purposes by the central appraisal district for the Texas county in which the property being evaluated is located.

(B) The volume of reserves calculated for ad valorem tax purposes by a property taxing jurisdiction outside of Texas in which the property being evaluated is located, provided:

(i) the out-of-state jurisdiction's law requires a complete and full evaluation of reserves that is reasonably comparable to that required by Texas law; and

(ii) the other jurisdiction provides corporations a convenient opportunity to contest such evaluations prior to formal suit in a court of law and in a manner reasonably comparable to that provided under Texas law.

(4) Volume per standard industry reserve estimating equations. An evaluation performed by the corporation using the following standard industry reserve estimating equations, with the following qualifications.

(A) For oil wells.

(i) Wells under five years old. For wells that have been producing for less than five years, the corporation shall

calculate oil reserves attributable to the corporation's property using the industry standard exponential decline equation.

(ii) Wells over five years old. For wells that have been producing for over five years, the corporation may have the option of using the industry standard exponential decline equation as in clause (i) of this subparagraph, or calculating oil reserves attributable to the corporation's property using the industry standard hyperbolic decline equation.

(iii) All wells.

(I) Calculations using the exponential and hyperbolic decline equations shall be based on production data submitted to the Texas Railroad Commission under Texas law, or on data comparable to that submitted to the Texas Railroad Commission but submitted to another jurisdiction under that jurisdiction's law, where applicable.

(II) Production data and estimated decline rates used to calculate reserves for ad valorem tax purposes by a central appraisal district for the Texas county in which a property is located are acceptable substitutes for such data obtained directly from the Texas Railroad Commission. The corporation may obtain comparable data used to calculate reserves for ad valorem tax purposes by a property taxing jurisdiction outside of Texas in which the property being evaluated is located, provided:

(-a-) the out-of-state jurisdiction's law requires a complete and full evaluation of reserves that is reasonably comparable to that required by Texas law; and

(-b-) the other jurisdiction provides corporations a convenient opportunity to contest such evaluations prior to formal suit in a court of law and in a manner reasonably comparable to that provided under Texas law.

(III) All corporations opting to perform their own evaluations using the exponential or hyperbolic decline equations shall use an abandonment flow rate of 1.5 barrels per day per well. Corporations using a higher abandonment flow rate are required to justify such deviations based on regional, economic, or well-specific criteria. The burden of proof in supporting such deviations shall rest with the corporation.

(B) For gas wells.

(i) Exponential decline method. For gas wells, the corporation may

calculate gas reserves attributable to the corporation's property using the industry standard exponential decline equation. All corporations electing to use this method must use a reasonable abandonment flow rate based on regional, economic, or well-specific criteria. The burden of proof in supporting the abandonment flow rate shall rest with the corporation.

(ii) P/Z reserves method. As an alternative to using the exponential decline equation in clause (i) of this subparagraph, the corporation may calculate gas reserves attributable to the corporation's property by using the industry standard equation for curve fitting the decline of reservoir pressure versus cumulative production. Abandonment pressures must be reasonably related to the local pipeline pressures. A graph of p/z versus cumulative production shall be extrapolated to the abandonment pressure point. Using this method, reserves equal the cumulative production at abandonment minus the cumulative production to date.

(iii) Rules applicable to either method.

(I) Calculations using the exponential decline or the p/z reserves methods shall be based on production data submitted to the Texas Railroad Commission under Texas law, or on data comparable to that submitted to the Texas Railroad Commission but submitted to another jurisdiction under that jurisdiction's laws, where applicable.

(II) Production data and estimated decline rates used to calculate reserves for ad valorem tax purposes by the central appraisal district for the Texas county in which a property is located are acceptable substitutes for data obtained directly from the Texas Railroad Commission. The corporation may obtain comparable data used to calculate reserves for ad valorem tax purposes by a property taxing jurisdiction outside of Texas in which the property being evaluated is located, provided:

(-a-) the out-of-state jurisdiction's law requires a complete and full evaluation of reserves that is reasonably comparable to that required by Texas law; and

(-b-) the other jurisdiction provides taxpayers a convenient opportunity to contest such evaluations prior to formal suit in a court of law and in a manner reasonably comparable to that provided under Texas law.

(c) The method chosen to calculate the volume of reserves must be used to amortize intangible drilling costs under the

successful efforts or full- cost methods of accounting, as described in SEC Regulation SX 210.4-10.

(d) Requests made to central appraisal districts for oil and gas reserve vol-

ume calculated for ad valorem purposes should be made on the form set out in Exhibit A as follows. It is the responsibility of each corporation to correctly identify the property on which a reserve volume is re-

quested. Appraisal districts will only provide an aggregate volume for a property. Each corporation must break out its fractional interest in the reserve volume provided by the appraisal district.



EXHIBIT "A"

Open Records Request for Mineral Reserve Volume  
for State Franchise Tax

Please print or type in completing this form. The appraisal district will provide the most current data from the prior certified January 1 appraisal roll for the total oil or gas lease (as applicable). The district will not provide data for fractional interests in an oil or gas lease.

TO BE COMPLETED BY COMPANY

Date of Request: \_\_\_\_\_

To: \_\_\_\_\_ County Appraisal District

Address: \_\_\_\_\_

From: \_\_\_\_\_ (Company Name)

Address: \_\_\_\_\_

Contact  
Person: \_\_\_\_\_

Phone No.: (\_\_\_\_) \_\_\_\_\_

Check One: \_\_\_\_ Oil Lease \_\_\_\_ Gas Lease

Lease Name: \_\_\_\_\_

Field (Reservoir) \_\_\_\_\_

Name: \_\_\_\_\_

Railroad Commission District No.: \_\_\_\_\_

Railroad Commission Lease No.: \_\_\_\_\_

Special Remarks: \_\_\_\_\_

TO BE COMPLETED BY APPRAISAL DISTRICT

Mineral Reserve Volume \_\_\_\_\_ Gas (MCF)  
on 1/1/\_\_\_\_: \_\_\_\_\_ Liquid (Barrels)

Open Records Request Charge: \$ \_\_\_\_\_  
Date Request Received: \_\_\_\_\_  
Date Payment Received: \_\_\_\_\_  
Date Processed/Mailed: \_\_\_\_\_ By: \_\_\_\_\_

### §3.554. Earned Surplus: Nexus.

(a) A foreign corporation is liable for the franchise tax if it is authorized to do business in this state or if it is actually doing business in this state.

(b) A corporation is doing business in this state, for the earned surplus component of the franchise tax, when it has sufficient contact with this state to be taxed without violating the United States Constitution. A corporation may be subject to the taxable capital component, but not the earned surplus component, because of Public Law 86-272. See §3.546 of this title (relating to Taxable Capital: Nexus) for the nexus standards for the taxable capital component of the franchise tax.

(c) If the only business activity within this state is the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside this state, then the corporation is not subject to the earned surplus component of the franchise tax.

### §3.559. Earned Surplus: Temporary Credit.

(a) Provisions. The provisions of this section apply to franchise tax reports originally due after January 1, 1992.

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

(1) Accounting methods—The method of allocating the cost, benefit, or expense of an asset or liability to accounting periods. For purposes of the credit under §171.111, the accounting method used to calculate the temporary difference under the Tax Code, §171.111, must be in accordance with GAAP. A change in accounting method includes the method used to allocate assets and liabilities to accounting periods or changes in estimates used in calculating the amount of the timing difference under the Tax Code, §171.111(b)(1). The disposition of an asset or liability through a sale, trade, abandonment, or other similar situation is not considered a change in an accounting method.

(2) Correction of an error—For purposes of computing timing differences under this section, the correction of an error resulting from mathematical mistakes, mistakes in the application of accounting principles, or an oversight or unintentional misuse of facts that existed on the computation date.

(3) Generally accepted accounting principles (GAAP)—For the purposes of this title, unless the context clearly requires

otherwise, GAAP means those broad rules of accounting formally accepted by the American Institute of Certified Public Accountants (AICPA) or its designees through publication of a statement, opinion, interpretation, research bulletin, and the like.

(4) Investee corporation—A corporation which issues voting stock held by an investor.

(5) Timing differences—Temporary differences as defined in Statement of Financial Accounting Standards Number 96 (SFAS 96) as amended effective January 1, 1992, which will reverse at some future date (unless otherwise provided under the Tax Code, Chapter 171, this section, or other sections applicable to the Tax Code, Chapter 171).

(A) Events and transactions which do not result in differences between the basis of an asset or liability for financial and income tax purposes do not qualify as timing differences even if a provision for income tax is required for financial accounting purposes.

(B) A timing difference is considered to reverse at some future date if such difference results in income, deductions, expenses, or credits for financial accounting or federal income tax purposes which offset the difference in basis in future accounting years. Differences whose reversal are under the control of the taxpayer do not qualify as timing differences.

(C) For the purposes of this section, deferred investment tax credits, allowance for funds used during construction, and basis differences for which tax provisions are not required under SFAS 96, as amended effective January 1, 1992, do not qualify as temporary differences.

(c) Notice of intent.

(1) The notice of intent to preserve the right to claim the temporary credit under the Tax Code, §171.111, must be submitted to the comptroller on forms specified by the comptroller. The form must be filed on or before March 2, 1992 (because March 1, 1992, falls on a Sunday). The postmark date (or meter-mark date, if there is no postmark) on the envelope in which the form is received determines the date of filing.

(2) The corporation must submit with the notice of intent the amount of timing differences determined under the Tax Code, §171.111(b)(1). The amount of such differences may be estimated if no final determination of such amount is available at the date of filing of the notice of intent. Although corrections of errors (as

defined in this section) in calculating such timing differences may be made on reports within the period of limitations, changes in accounting methods will not be considered a correction of an error in calculating such differences. The corporation will be liable for any applicable penalty and interest if the amount of timing differences determined results in an underpayment of tax.

(3) The preservation of the right to claim the credit may not be conveyed, assigned, or transferred to another entity.

(d) Electing the credit.

(1) The election to claim the credit is a one-time election. If the election is revoked, the credit may not be claimed on any reports originally due on or after the date the election is revoked.

(2) A corporation elects the credit by:

(A) properly taking the credit in computing the tax on earned surplus and paying the additional tax due under the Tax Code, §171.111(h), on a report filed on or before the original due date; or

(B) electing the credit on a timely filed extension request and complying with the requirements of subparagraph (A) of this paragraph on the report filed on or before the extended due date of the report.

(3) If a corporation elects the credit on a report on which the corporation was ineligible for the credit based on the provisions of this section or the Tax Code, Chapter 171, the corporation is treated as though the election was not made. The corporation will be liable for any applicable penalty and interest for underpayment of tax.

(4) The allowable credit on reports due within the limitation period as specified in §3.571 of this title (relating to Statute of Limitations) is subject to adjustment even if the initial election to take the credit is outside the period of limitations under §3.571 of this title.

(e) Computation of the credit.

(1) If the credit under the Tax Code, §171.111, is claimed, the corporation is required to use the GAAP method in computing taxable capital unless another method is required under the Tax Code, Chapter 171, or the sections promulgated thereto. If another method is required under the Tax Code, Chapter 171, or the franchise tax rules, the corporation must use the required franchise tax methods in computing timing differences. For example, a corporation must use the cost method of accounting for investments in other corporations in

computing timing differences. If the credit is claimed, the corporation may not use the federal income tax method in whole or in part in computing taxable capital.

(2) The amount subject to the credit determined under the Tax Code, §171.111(b)(1), is the excess of the basis of qualifying assets and liabilities for financial accounting purposes over the basis of qualifying assets and liabilities for federal income tax purposes. Amounts not allowed as temporary differences under this section or Tax Code, §171.111, shall be excluded from the computation of the amount subject to credit. The corporation must include all assets and liabilities in computing the credit under the Tax Code, §171.111 (i.e., the corporation can not compute the differences for only certain assets and/or liabilities).

(f) Revocation of the election. The election and right to claim the credit under the Tax Code, §171.111, is revoked at the earliest of the following occurrences:

(1) after making a valid election:

(A) the corporation notifies the comptroller in writing that the election is revoked;

(B) the corporation fails to claim the credit on a subsequent report or fails to report the additional tax due under the Tax Code, §171.111(h), on a subsequent report; or

(C) the corporation uses the federal income tax method in reporting taxable capital; or

(2) when calculating taxable capital, the corporation changes the accounting method for any asset or liability used in determining the temporary differences under the Tax Code, §171.111(b)(1). Other changes in accounting methods are subject to the requirements of §3.547 of this title (relating to Taxable Capital: Accounting Methods); or

(3) the corporation is the nonsurvivor of a merger or consolidation or the corporation terminates its existence for any other reason.

(g) Temporary credit. The temporary credit is not available when computing the additional tax under the Tax Code, §171.0011.

### §3.561. Enterprise Zones.

(a) Except as otherwise provided in this section, the provisions of this section apply to franchise tax reports originally due on or after September 1, 1991.

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

(1) Enterprise project—A qualified business designated by the Texas Department of Commerce as an enterprise project under the Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7) that is eligible for the state tax incentives provided by law for an enterprise project.

(2) Enterprise zone—An area of the state designated by the Texas Department of Commerce as an enterprise zone under the Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7).

(3) New job—A new employment position that is:

(A) created by a qualified business that has provided employment to a qualified employee of at least 1,040 hours annually; and

(B) intended to be an employment position retained during the period the business is designated as an enterprise project.

(4) Qualified business—A person, including a corporation or other entity, that the Texas Department of Commerce certifies has met the necessary criteria specified under the Texas Enterprise Zone Act (Texas Civil Statutes, Article 5190.7).

(5) Qualified employee—An employee who works for a qualified business and who performs at least 50% of his service for the business within the enterprise zone.

(6) Qualified investment—Capital equipment or other investment that qualifies for depreciation for federal income tax purposes and that is placed in service in the enterprise zone not earlier than the 90th day before the date of designation as an enterprise project. The investment must be used in the normal course of business in the enterprise zone and must not be removed from the zone, except for repair and maintenance.

(c) A corporation may apply for a refund under the Tax Code, §171.501, each year that it is certified as eligible for refund by the Texas Department of Commerce.

(d) The comptroller shall issue a refund under the Tax Code, §171.501, after receiving certification from the Texas Department of Commerce that a qualified business has created 10 or more new jobs for qualified employees in its enterprise zone. The 10 or more new jobs must have been created during the calendar year containing the accounting year end on which the franchise tax report is based. For example, a

corporation with a June 30, 1992, accounting year end would be eligible for a refund of franchise tax paid on its 1993 annual report if 10 or more new jobs are created during the 1992 calendar year.

(e) If a corporation is eligible for a refund under the Tax Code, §171.501, on its initial report and that report includes a regular annual period, the corporation will be entitled to two refunds:

(1) a refund for the initial and second periods; and

(2) a refund for the regular annual period.

(f) Claims for refund under this section must be on the form provided by the comptroller for that purpose. The claim must indicate the report year in which franchise tax was paid. The claim must include certification from the Texas Department of Commerce that 10 or more new jobs have been created during the applicable calendar year.

(g) A corporation that the Texas Department of Commerce has certified to be a qualified business eligible for a tax deduction may elect to reduce either its apportioned taxable capital or apportioned taxable earned surplus in accordance with the Tax Code, §171.1015, on each report based on a fiscal year during all or part of which the corporation is designated an enterprise project. An election for an initial period applies to the second tax period and to the first regular annual period. This requirement is applicable to the first regular annual period whether it is included in the corporation's initial report or first annual report. Otherwise, the election will not be binding on the corporation for future reports.

(1) The deduction from apportioned taxable capital is limited to 50% of the depreciated value of qualified investments. For example, a corporation with a June 30 fiscal year end is designated as an enterprise project on January 3, 1991. The corporation's 1992 annual report (based on its June 10, 1991, fiscal year end) would be the first report in which it would be eligible for a taxable capital deduction under the Tax Code, §171.1015. The deduction would apply to qualified investments placed in service in the enterprise zone on or after January 3, 1991.

(2) The deduction from apportioned taxable earned surplus is limited to 50% of the depreciated value of qualified investments. For example, a corporation with a June 30 fiscal year end is designated as an enterprise project on January 3, 1991. The corporation would be eligible for the earned surplus deduction on its 1992 annual report (based on its June 30, 1991, fiscal year end) under the Tax Code, §171.1015.

The deduction would apply to qualified investments placed in service in the enterprise zone on or after January 3, 1991.

(h) A corporation must retain records substantiating its apportioned taxable capital or apportioned earned surplus deduction. The records must be verifiable by audit and include copies of invoices showing the items purchased, the date of purchase, and the cost of the purchase. The records must also reflect the depreciated value of the items purchased and show that these items were placed in service in the zone after the corporation's designation as an enterprise project.

(i) A corporation receiving its enterprise project designation after August 31, 1991, cannot claim a tax base deduction under the Tax Code, §171.1015, until after August 31, 1993. For example, a corporation with a November 30, 1991, fiscal year end is designated an enterprise project on September 30, 1991. The corporation could not claim the tax base deduction on its 1992 report until after August 31, 1993. An amended report would have to be filed at that time.

(j) A corporation receiving its enterprise project designation after August 31, 1991, cannot claim a tax base deduction on any franchise tax report originally due on or before August 31, 1993.

#### **§3.566. Title Insurance Holding Companies.**

(a) **Controlled company.** For franchise tax purposes controlled company has the same meaning as defined in the Insurance Code, Article 21.49-1.

(b) **Eligibility.** A title insurance holding company that is subject to the Insurance Code, Article 21.49-1, and which controls one or more domestic title insurance companies that are subject to the tax on premiums under the Insurance Code, Article 9.59, is entitled to a credit against its franchise tax imposed by the Tax Code, Chapter 171.

(c) **Calculation of the credit.**

(1) The credit for each controlled domestic title company is computed by multiplying the amount of tax on premiums paid by that company in the most recent calendar year ending before the franchise tax report is due, by the percentage of ownership of the title insurance holding company in the controlled domestic title insurance company.

(2) The percentage of ownership of a controlled domestic title insurance company is determined as of the accounting year-end upon which taxable capital is based.

(d) **Limitations.** No portion of a credit may be used on a report for another period.

(e) **Additional tax.** No credit is allowed against the additional tax computed under the Tax Code, §171.0011.

(f) **Effective date.** The tax credits provided by the Insurance Code, Article 9.59, apply to the reporting and calculation of franchise taxes for each initial, second, and regular annual period beginning on or after January 1, 1990.

#### **§3.568. Changes in Corporate Organization.**

(a) Every domestic corporation seeking to dissolve under Texas Business Corporation Act, Article 6.07, and every foreign limited liability company seeking to withdraw under Texas Limited Liability Company Act, Article 7.10, must obtain a certificate (see §3.569 of this title (relating to Requests for Information)) from the comptroller stating that all taxes administered by the comptroller have been paid through the effective date of such dissolution or withdrawal.

(b) Every corporation is required to pay all franchise tax, penalty, and interest through the end of the privilege period containing the effective date of the dissolution, merger, withdrawal, or reinstatement. A refund will not be paid nor credit given to the corporation for the period from the date of dissolution, merger, or withdrawal through the end of the privilege period. See §3.565 of this title (relating to Survivors of Mergers) for possible credit to which a survivor of a merger may be entitled. See §3.567 of this title (relating to Additional Tax on Earned Surplus) for information about the additional tax which must be paid before dissolution, merger, or withdrawal.

(c) If a corporation doing business in Texas is dissolved under the laws of its state of incorporation, its franchise tax account will be closed as of the date of the dissolution, and tax must be paid through the end of the period in which the corporation dissolved.

(d) Before the name of a corporation may be changed on the records of the comptroller, an amendment to the corporation's charter or certificate of authority must be filed with the Texas Secretary of State. A foreign corporation without a certificate of authority may change its name on the records of the comptroller by filing with the comptroller a copy of the name change document filed in the corporation's home state.

#### **§3.570. Liens.**

(a) Franchise tax liens are filed and recorded in accordance with the Tax Code, Chapter 113. If the filing and recording of the lien resulted from a corporation's failure to file franchise tax reports and make franchise tax payments when due, payment solely of the amount reflected in the lien, as recorded, is insufficient to release the lien. Before the lien will be released, all delinquent reports must be filed and all taxes, penalties, and interest shown to be due must be paid.

(b) A lien is routinely filed in each county in which it is known that the delinquent corporation owns property. A lien filed as the result of forfeiture of a corporation's corporate privileges in Texas will be routinely and automatically released upon revival of the corporation's corporate privileges. Revival is accomplished when the corporation files all delinquent franchise tax reports and pays all delinquent taxes, penalties and interest. However, a corporation must request release of a lien filed against its property under any other circumstances.

(c) Where a lien secures more than one lot or tract of land, a release of the lien against any one of the lots or tracts owned by a corporation may be given by the comptroller in accordance with the provisions of the Tax Code, §113.008.

(d) If a franchise tax lien is filed and recorded against the property of the registered agent of a corporation or other individual, a release will be furnished to the individual, discharging him from all responsibility as regards the state's lien. The release, however, will expressly maintain and continue in full force and effect the state's lien against the property of the corporation.

(e) Where a lien is based on a court judgment in which a specific amount of taxes, penalties, and interest is awarded to the state, the judgment and franchise tax lien will be released upon payment by the corporation of the specific amount awarded by the judgment, plus payment of any court costs awarded to the state and of interest from the date of the judgment until the date of payment by the corporation.

(f) A franchise tax lien filed after January 1, 1970, is subject to the rule of "first in time, first in right," but is cumulative and covers franchise tax accruing after filing of the lien. Federal court decisions may vary this rule with regard to federal liens.

(1) The comptroller may issue a release as to a particular piece of property upon payment of the value of the lien, where the property is sold at a private sale (rather than at a foreclosure sale) and the state's lien is inferior to one or more prior liens. The "value of the lien" is determined in these circumstances by subtracting the amount of all prior liens from the sales

price. If the total amount of the prior liens is greater than the sales price, a release may be given upon payment of a nominal consideration.

(2) A state tax lien is invalidated by a formal foreclosure sale under a deed of trust, but not under a judicial foreclosure unless the state was joined as a party to the proceedings. Releases are not issued for a state lien which has been invalidated by either of these proceedings.

### **§3.573. Special Reporting Procedures.**

#### **(a) Petition for special reporting.**

(1) Permission to employ a special reporting method will not be granted unless a written petition is timely filed. The petition may be submitted in letter form, must specify the method of special reporting desired, and should be addressed to the Comptroller of Public Accounts, Austin, Texas 78774, Attention: Franchise Tax Policy Section. The petition for special reporting must incorporate or have attached schedules, statements, or other documentation reflecting the following information:

(A) a brief description of the nature of the corporation's primary business activities conducted within and, if substantially different, without the State of Texas, including indication of the number of states in which business activities are conducted;

(B) a brief statement of the reasons the allocation and apportionment provisions of the Tax Code, §171.106, do not fairly represent the extent of the corporation's business done in Texas;

(C) a schedule or schedules showing, as of the corporation's accounting year end date in the previous calendar year (or date upon which tax is based for corporations filing an initial report), the approximate percentage relationship between:

(i) gross receipts from business done in Texas to total gross receipts from its entire business;

(ii) payroll expenses paid for personal services performed in Texas to total payroll expenses; and

(iii) the average value of the corporation's property in Texas to the average value of the corporation's property everywhere;

(D) any additional information the comptroller deems necessary to make a determination on the petition.

(2) A petition to employ a special reporting method in the initial franchise tax report must be filed at least 15 days

prior to the original due date of the report, and a petition to employ a special reporting method in an annual report must be no later than March 1 of the year in which the annual report is due. The postmark (or meter mark in the absence of a postmark) on the envelope in which the petition is received determines the date of filing. If the comptroller requires additional information in order to make a determination on the granting of a petition, the information must be submitted within 90 days after the original due date of the franchise tax report or the date of the letter requesting additional information, whichever is later. If the corporation does not timely submit the information, the petition will be considered withdrawn.

(3) A corporation which is granted permission to employ a special reporting method is not required to submit subsequent petitions to employ the identical method in subsequent annual reports. However, a new petition is required if a corporation desires to change from one method of special reporting to another method of special reporting. Permission to employ a special reporting method will be automatically revoked if the corporation files reports not using the special reporting method granted. A corporation granted special reporting may file a report using the single factor receipts fraction but use of the single factor receipts fraction automatically forfeits the privilege of using a special reporting method for subsequent reports unless a new petition is timely submitted and a substantial change in the nature of its business has occurred.

(4) It is the responsibility of each corporation granted permission to employ a special reporting method to advise the comptroller at least 15 days prior to the original due date of its next report of changes in its organizational structure or in the manner in which its primary business activities are conducted (e.g., merger, consolidation, or other reorganization) which vary from the facts presented in its petition for a special method of reporting. Upon receipt thereof, the comptroller will advise the corporation whether, in light of such changes, a new petition for a special reporting method is required. Failure to notify the comptroller will not revoke permission if the corporation is still eligible to use the special reporting method granted. However, if the comptroller does not receive notification and he discovers the corporation is no longer eligible for special reporting, he will revoke permission retroactively to the first date the corporation was no longer eligible and apply penalties pursuant to the Tax Code, §171.362.

(5) Permission granted to one corporation may not be used for another corporation, nor does a corporation succeed to the permission by merger or consolidation.

(6) A special reporting method is not effective retroactively, and is granted only for a report or reports due subsequent to the filing date of the petition.

(7) Failure of a corporation to receive notification from the comptroller of the final determination on its petition does not relieve the corporation of responsibility to report and pay the tax on or before the due date, in accordance with the statutory formula contained in the Tax Code, §171.106. If the final determination authorizes use of a special reporting method, the corporation will be notified to file an amended report.

#### **(b) Special reporting methods.**

(1) Separate accounting means the taxation as a separate entity of a distinctly identifiable segment of a corporation, which segment is located entirely within Texas and performs all of the corporation's business activities carried on in Texas. A corporation will not be granted separate accounting unless it demonstrates that the franchise tax due from the segment would be the same as that which would be due if the segment were a separately incorporated entity and that only separate accounting will fairly represent the corporation's business in Texas. The separately accounted for segment must, at a minimum, maintain a separate set of books and records of account, including financial statements, which reflect the business activities of the segment apart from that of the corporation, such as by making provision for overhead and all other proper charges. The corporation petitioning for separate accounting must also establish as a base amount of taxable capital the net worth at the time the petition is due of the segment to be separately accounted for. The net worth of the segment is its total assets less liabilities attributable to the segment's operations. The corporation will be required to separately accumulate net earnings attributable to the segment's operations, allowing only a pro rata share of dividends declared by the corporation as a whole to be deducted from the segment's annual net earnings. Such pro rata share will be determined based on the ratio of the segment's annual net earnings to the corporation's annual net earnings as a whole.

(2) The use of the three-factor or alternate two-factor formula, as described in subsection (c) of this section, is the usual method of special reporting granted by the comptroller. The three-factor or alternate two-factor formula will be granted by the comptroller if a corporation meets all requirements for special reporting set out in this rule.

(3) The employment of any other method to allocate and apportion a corporation's capital will be permitted by

the comptroller only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the special reporting methods authorized by the Tax Code, §171.108(1) and (2). The burden will be upon the petitioning corporation to prove that the statutory apportionment does not fairly represent the corporation's percentage of Texas business and that the proposed allocation method will equitably allocate its business to Texas.

(c) Three-factor or alternate two-factor formula. The comptroller may approve a three-factor formula which allocates a corporation's taxable capital to Texas by multiplying such capital by a fraction, the numerator of which is a gross receipts factor plus a payroll factor plus a property factor, and the denominator of which is three. However, if there is no payroll attributed to Texas, or if there is no property attributed to Texas, an alternate two-factor formula may be approved in which the numerator does not include a factor for the zero item, and the denominator of the fraction must be two. If neither payroll nor property is attributable to Texas, a three-factor or alternate two-factor formula as otherwise provided in this subsection may not be employed. The composition of each of the factors shall be determined as follows.

(1) The gross receipts factor is a fraction, the numerator of which is the corporation's gross receipts from its business done in Texas and the denominator of which is the corporation's total gross receipts from its entire business, both as prescribed in the Tax Code, §171.103 and §171.105. In determining such gross receipts, no distinction shall be made between business income and nonbusiness income. Receipts of subsidiaries or other related corporations or business entities may not be included in the fraction.

(2) The payroll factor is a fraction, the numerator of which is the total amount of wages, salaries, or other type compensation paid by the corporation to its officers and employees for personal services in Texas during its accounting year, and the denominator of which is the total such compensation paid everywhere during the accounting year. A corporation must include in this fraction the total compensation paid by the corporation to its officers and employees even though such individuals may also perform some services for the corporation's parent, subsidiaries, or other business entities. Compensation is not reduced by the amount that is capitalized rather than expensed for book purposes. Wages, salaries, or other compensation is paid for personal services in Texas if:

(A) the individual's service is performed entirely within Texas;

(B) the individual's service is performed both within and without Texas, but the service performed without the State of Texas is incidental to the service within Texas; or

(C) some of the service is performed in Texas and:

(i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in Texas; or

(ii) the base of operations or the place from which directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is within Texas.

(3) The property factor is a fraction, the numerator of which is the average value of the corporation's real property and

tangible personal property owned or rented and used in Texas during the corporation's accounting year, and the denominator of which is the average value of all the corporation's real property and tangible personal property owned or rented and used everywhere during such period. Property owned is valued at its original cost; property rented is valued at eight times the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals. The average value of property is determined by averaging the values at the beginning and ending of the corporation's accounting year. However, the comptroller may require other methods of determining average value if reasonably required to reflect fairly the average value of the corporation's property.

(d) Schedules to accompany special reporting. Each franchise tax report employing the three-factor formula must be accompanied by a schedule in the format shown in Exhibit A, reflecting the exact figures used in arriving at the percentage of business in Texas. If the report is based on some other special reporting method, a schedule must be furnished showing the figures and other details used in arriving at the amount of tax reported by the corporation. The phrase "SPECIAL REPORTING" must appear above the corporate name on each report.

(e) Repeal of special reporting method. The special reporting method previously provided for in the Tax Code, §171.108, has been repealed. The repeal of Tax Code, §171.108, is effective beginning May 1, 1989, of any tax period. The provisions of this rule are continued in effect prior to this date only.

Exhibit A  
SCHEDULE OF RECEIPTS, PROPERTY AND PAYROLL

Corporation Name \_\_\_\_\_  
 Taxpayer Number \_\_\_\_\_  
 Accounting Year \_\_\_\_\_  
 Ending Date \_\_\_\_\_

(DO NOT SEPARATE FROM FRANCHISE REPORT)

The following schedule must be completed and attached to the Texas franchise tax report if the corporation is permitted to file the report using the three-factor formula or alternative two-factor formula. Each of the factors must be completed in accordance with Franchise Tax Rule No. 3.573. When authorized to use the alternate two-factor formula, complete only the two factors for which permission has been granted.

<u>RECEIPTS</u>	<u>Texas</u>	<u>Everywhere</u>	<u>Percent</u>
Sales-Less Allowance and Returns	\$ _____	\$ _____	
Net Capital Gains and Losses from Sale of Assets	_____	_____	
Interest	_____	_____	
Dividends	_____	_____	
Other Income	_____	_____	
Total Receipts	\$ _____	\$ _____	_____

<u>PROPERTY</u>	<u>Texas</u>	<u>Everywhere</u>	<u>Percent</u>
Property, Cost, Beginning of Period	\$ _____	\$ _____	
Property, Cost, End of Period	_____	_____	
Total Cost	\$ _____	\$ _____	
Average Cost/Total Cost divided by 2	\$ _____	\$ _____	
Annual Rental Value of Property (Less Subrentals) Beginning of Period X 8	\$ _____	\$ _____	
Annual Rental Value of Property (Less Subrentals) End of Period X 8	_____	_____	
Total Rental Value	\$ _____	\$ _____	
Average Rental Value - Total Rental Value divided by 2	\$ _____	\$ _____	
Total Average Value of Prop.	\$ _____	\$ _____	_____

<u>PAYROLL</u>	\$ _____	\$ _____	_____
<u>TOTAL PERCENT</u>			_____

PERCENT OF BUSINESS IN TEXAS, DIVIDE  
 TOTAL PERCENT BY 2 or 3, AS APPLICABLE \_\_\_\_\_

(This form may be reproduced.)

## INSTRUCTIONS

1. Receipts factor - enter percent (Texas/Everywhere x 100 = Percent) of Texas receipts to Receipts everywhere.
2. Property factor - enter percent of property in Texas to property everywhere.
3. Payroll factor - enter percent of payroll in Texas to payroll everywhere.
4. Round the respective percentages to two decimal places (xx.xx%).

### *\$3574. \$100 Prepayments.*

(a) Repeal. The \$100 franchise tax prepayment required by the Tax Code, §171.155, is not required for corporations incorporating or applying for a certificate of authority after December 31, 1991.

#### (b) Prepayment.

(1) Prior to and as a precondition to receiving a charter or certificate of authority from the Secretary of State of Texas, each domestic corporation incorporating under the Texas Business Corporation Act or the Texas Professional Corporation Act or a foreign corporation qualifying under the Texas Business Corporation Act must make a prepayment in the amount of \$100 to the Comptroller of Public Accounts. This prepayment will be collected by the secretary of state at the time a charter or certificate of authority application is submitted for approval.

(2) The \$100 prepayment may not be refunded in whole or in part for any reason after the charter or certificate of authority has been issued by the secretary of state.

(3) Domestic corporations organized under the Texas Nonprofit Corporation Act and foreign corporations issued a certificate of authority under such Act are not required to pay the initial franchise tax deposit prescribed in this section.

(c) Filing the initial franchise tax report. Each corporation subject to this section shall file its initial franchise tax report and pay the amount of tax shown thereon to be due and payable. The prepayment prescribed by the Tax Code, §171.155, shall be applied as a credit against the tax computed on the initial franchise tax report and subsequent reports. This credit will be preprinted on the initial franchise tax report mailed to each corporation.

(d) Extensions. Extensions of time within which to make the prepayment shall not be granted.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116102

Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: January 27, 1992

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 119. Agreements With Other Agencies

#### Memorandums of Understanding

##### • 37 TAC §119.5

The Texas Youth Commission (TYC) proposes an amendment to §119.5, concerning service contracts for dysfunctional families. The purpose of the amendment is to require TYC, the Texas Department of Human Services (DHS), and the Texas Juvenile Probation Commission (TJPC) to continue complying with the Human Resources Code (HRC), §71.011(A), as passed by the 71st Texas Legislature. The agencies initially complied with the law by adopting §72.901 in 1990. The amendment also allows the agencies to continue applying the section without having to amend it every year. Finally, the amendment clarifies that the MOU is operative only in those years when state appropriations are sufficient for the agencies to allocate funds for joint contracts for services to dysfunctional families.

John Franks, Director of Fiscal, has determined that for the first five-year period the proposed 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. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that dysfunctional families are ensured that they will continue receiving coordinated services when the agencies have sufficient funding to enter into joint contracts. There will be no effect on small businesses as a result of enforcing or administering the section. There is no anticipated economic cost to persons who are required to comply with the section.

Comments on the proposal may be submitted to Gail Graham, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §71.011(a), which provides Texas Youth Commission with the authority to enter into a memorandum of understanding with the DHS and TJPC regarding service delivery to dysfunctional families.

#### *§119.5 Service Contract For Dysfunctional Families.*

(a) The Texas Youth Commission adopts by reference a joint memorandum of understanding with the Texas Department of Human Services and the Texas Juvenile Probation Commission regarding service delivery to dysfunctional families.

(b) The memorandum of understanding was published in the *Texas Register* by the Texas Department of Human Services on October 29, 1991, at 16 TexReg 6126 [July 24, 1990, at (15 TexReg 4198 and 4199)]. Copies of the memorandum of understanding are available from the Texas Youth Commission.

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



Issued in Austin, Texas, on December 16, 1991.

TRD-9116075

Ron Jackson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 483-5244

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

##### Subchapter G. Resources

The Texas Department of Human Services (DHS) proposes amendments to §3.704 and §3.902, concerning the exclusion of income and resources that are exempted by federal law for Native Americans who receive aid to families with dependent children (AFDC) and/or food stamp program benefits. The purpose of the proposed amendments is to comply with federal regulations.

Burton F. Raiford, interim commissioner, 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. Raiford 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 AFDC and food stamp policy that is in compliance with federal regulations. 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 Rita King at (512) 450-4148 in DHS's Client Self-Support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-353, Texas Department of Human Services E-311, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

##### • 40 TAC §3.704

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance and financial assistance programs.

##### §3.704. Types.

(a) (No change.)

(b) Aid to families with dependent children. Exclusions from resources in

AFDC are:

(1)-(9) (No change.)

(10) resources exempted by federal law. DHS exempts government payments by the Individual and Family Grant Program or the Small Business Administration provided to rebuild a home or replace personal possessions damaged in a disaster, if the household is subject to legal sanction if the funds are not used as intended. DHS exempts payments made under the following Acts:

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

(D) **Passamaquoddy**  
[Passamagoddy] Tribe, [and] the Penobscot Nation, and the Houlton Band of Maliseet Indians received according to the Maine Indian Claims Settlement Act of 1980;

(E)-(I) (No change.)

(11)-(12) (No change.)

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

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116173

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

Proposed date of adoption: April 1, 1992

For further information, please call: (512) 450-3765

##### Subchapter I. Income

##### • 40 TAC §3.902

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance and financial assistance programs.

##### §3.902. Types.

(a) (No change.)

(b) Aid to families with dependent children. Exclusions from income for AFDC are:

(1)-(9) (No change.)

(10) native and Indian claims. DHS exempts payments made under the Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241) and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Laws

92-254; 94-540; 94-114, §6; **95-433; 96-420**; 98-64, §2; and 93-134, §7 (as amended by Public Law 97-458, §4);

(11)-(18) (No change.)

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

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116174

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

Proposed date of adoption: April 1, 1992

For further information, please call: (512) 450-3765

### Chapter 72. Memoranda of Understanding with Other State Agencies

#### Memorandum of Understanding for Child Protective Services

##### • 40 TAC §72.902

The Texas Department of Human Services proposes an amendment to §72.902, concerning service delivery to runaway children, in its Memoranda of Understanding with Other State Agencies chapter. Section 72.902 adopts 37 TAC §341.21 by reference. The Juvenile Probation Commission (TJPC) has proposed an amendment to 37 TAC §341.21 after conducting an annual review of the section with DHS as required by law. TJPC's proposed amendment includes changes in dates, staff titles, and statutory references, and in the mean number of runaways reported for each county in Texas. The purpose of the amendment to §72.902 is to ensure that the section reflects existing conditions.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the improvement of local coordination of services to runaway children. There will be no effect on small businesses as a result of enforcing or administering the section. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Thomas Chapmond at 450-3309 in the Protective Services for Families and Children Department. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-348, Texas Department of Human Services E-503,

phy, Policy and Document Support-348, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 141, which authorizes the department to enter into a memorandum of understanding with the TJPC regarding service delivery to runaway children. Memoranda of Understanding for Child Protective Services

**§72.902. Memorandum of Understanding on Service Delivery to Runaway Children.** The Texas Department of Human Services (DHS) adopts by reference 37 TAC §341.21 (relating to Memorandum of Understanding on Service Delivery to Runaways) as amended effective January 1, 1992. This memorandum of understanding between the Texas Juvenile Probation Commission (TJPC) and DHS provides for TJPC and DHS coordination of services to runaway children at the community level.

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

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

TRD-9116175 Nancy Murphy  
Agency liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Proposed date of adoption: March 1, 1992

For further information, please call: (512) 450-3765

## Part II. Texas Rehabilitation Commission

### Chapter 117. Special Rules and Policies

#### • 40 TAC §117.2

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

The Texas Rehabilitation Commission proposes the repeal of §117.2, concerning sick leave pool, as it is replaced by an update version of the sick leave pool approved by the board of the Texas Rehabilitation Commission on December 12, 1991.

Charles Harrison, comptroller, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the re-

peal.

Mike Mericle, assistant deputy commissioner, human resource management, also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the repeal the old and replace with an updated sick leave pool policy. 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 Mike Mericle, Assistant Deputy Commissioner, Human Resources Management, 4900 North Lamar Boulevard, Austin, Texas 78751.

The repeal is proposed under Texas Civil Statutes, Article 6252-8e, §3 (Senate Bill 357, 71st Legislature, 1989) and the Texas Human Resources Code, Title 7, which provide the Texas Rehabilitation Commission with the authority to "...make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for hearings, and other regulations necessary to carry out the purpose of this chapter."

#### §117.2. Sick Leave Pool.

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116168 Charles W. Schiesser  
Assistance Commissioner  
Texas Rehabilitation  
Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 483-4051

The Texas Rehabilitation Commission proposes the new §117.2, concerning sick leave pool, so that an updated version of the sick leave pool may be available. The new policy was approved by the Texas Rehabilitation Commission on December 12, 1991.

Charles Harrison, comptroller, 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.

Mike Mericle, assistant deputy commissioner, human resource management, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide an updated sick leave pool policy for the Texas Rehabilitation Commission. 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 Mike Mericle, Assistant Deputy Commissioner, Human Resources Management, 4900 North Lamar Boulevard, Austin, Texas 78751.

The new section is proposed under Texas Civil Statutes, Article 6252-8e, §3 (Senate Bill 357, 71st Legislature, 1989) and the Texas Human Resources Code, Title 7, which provide the Texas Rehabilitation Commission with the authority to "...make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for hearings, and other regulations necessary to carry out the purpose of this chapter."

#### §117.2. Sick Leave Pool.

(a) The commission adopts by reference Commission TRC APPM 23.9, paragraph 9.5, General Policies; Sick Leave Pool, and an attached form.

(b) Copies are available for review in Human Resources Management, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas, 78751. Copies are available on request.

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116169 Charles W. Schiesser  
Assistance Commissioner  
Texas Rehabilitation  
Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 483-4051

## Part X. Texas Employment Commission

### Chapter 301. Unemployment Insurance

#### • 40 TAC §301.13

The Texas Employment Commission proposes an amendment to §301.13, concerning commission hearings involving coverage and contributions or reimbursements. This rule guides the commission and the public in questions involving employer tax liability.

J. Ferris Duhon, legal counsel, has determined that for the first five years the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Duhon also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification

and addition of time limitation on current procedure allowing motions for reconsideration under the rule being amended. There will be no effect on small businesses as a result of enforcing or administering the section. There is no anticipated economic cost to persons who are required to comply with the section.

Comments on the proposal may be submitted to Carolyn Calhoun, Office of Special Counsel, T.E.C. Building, 101 East 15th, Room 660, Austin, Texas 78778, (512) 463-2291.

The amendment is proposed under Texas Civil Statutes, Article 5221b, which provides the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

*§301.13. Commission Hearings Involving Coverage and Contributions or Reimbursements.*

(a)-(i) (No change.)

(j) Any decision of the commission shall become final 30 days after the date of mailing thereof, unless, within such 30 days, the appeal is reopened by commission order or a party to the appeal files a written motion for reconsideration.

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116163 Carolyn Calhoun  
Administrative Technician  
IV  
Texas Employment  
Commission

Earliest possible date of adoption: January 27, 1992

For further information, please call: (512) 463-2291

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**TITLE 43. TRANSPORTATION**

**Part I. Texas Department of Transportation**

**Chapter 1. Administration**

**Conditional Grant Program**

• **43 TAC §§1.400-1.409**

*(Editor's Note: The Texas Department of Transportation 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 Department of Transportation proposes new §§1.400-1.409, concerning a conditional grant program. Section 1.400 describes the department's intent which is to establish procedures for the administration of

a conditional grant program; §1.401 describes the program, which is to provide financial assistance to eligible minority students who exhibit an aptitude for engineering, intend to become civil engineers and work for the department for two years after graduation; §1.402 defines terms to be used under this undesignated head; §1.403 describes the eligibility requirements to receive financial aid; §1.404 describes how a student applies for a conditional grant; §1.405 requires eligible students to sign an agreement setting forth the terms and conditions of the grant; §1.406 describes the type and amount of financial assistance that eligible students may receive; §1.407 describes how a student may receive a stipend as part of a conditional grant; §1.408 describes how a student would be declared in default of the grant agreement; and §1.409 describes how a student who defaults will repay the conditional grant.

Senate Bill 352, Regular Session, 72nd Legislature, 1991, requires the Texas Department of Transportation to establish and administer a conditional grant program to provide financial assistance to minority students who exhibited in the student's secondary school performance an aptitude for engineering and who intend to become civil engineers and work for the department for two academic years following graduation. Senate Bill 352 requires the department to make conditional grants to eligible students for use beginning with the fall semester in 1992. The legislation also requires the department to adopt rules implementing the program not later than January 1, 1992.

The Texas Transportation Commission has determined that providing financial assistance to minority students conditional upon recipients working for the department is in the public interest and furthers the statutory duties and responsibilities of the department: increasing the number of minority civil engineers qualified for employment with the department; encouraging minorities to enter public service and work for the department in a professional capacity; and providing greater racial and ethnic diversity among the department's professional staff.

The conditional grant program will further serve to help remediate historical underrepresentation of minorities in civil engineering by encouraging minority students to enter public service and work for the department as civil engineers.

Leslie A Clark, director, Human Resources Division, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated additional cost of \$200,000 per year for the years 1992-1996. There will be no effect on local government for the first five-year period the sections will be in effect.

Mr. Clark also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be: providing financial assistance to deserving and competent minority students who are pursuing civil engineering degrees; increasing the number of qualified

minority engineers available for the department and Texas workforce employment; and generating more interest and awareness about career opportunities in engineering occupations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no impact on local economies or overall employment as a result of enforcing the proposed sections.

Comments on the proposal may be submitted to Mr. Leslie A. Clark, Director, Human Resources Division, Texas Department of Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701; but in any event, no later than January 27, 1992.

The Texas Department of Transportation will also conduct a public hearing, pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, to receive data, comments, views, and/or testimony concerning the proposed new section.

The public hearing will be held on Thursday, January 9, 1992, at 10 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 11th and Brazos, Austin. Any interested person may appear and offer comments or testimony, either orally or in writing, however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content.

The new sections are proposed under Texas Civil Statutes, Article 6666, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Senate Bill 352, 72nd Legislature, Regular Session, 1991, which requires the department to adopt rules implementing a conditional grant program.

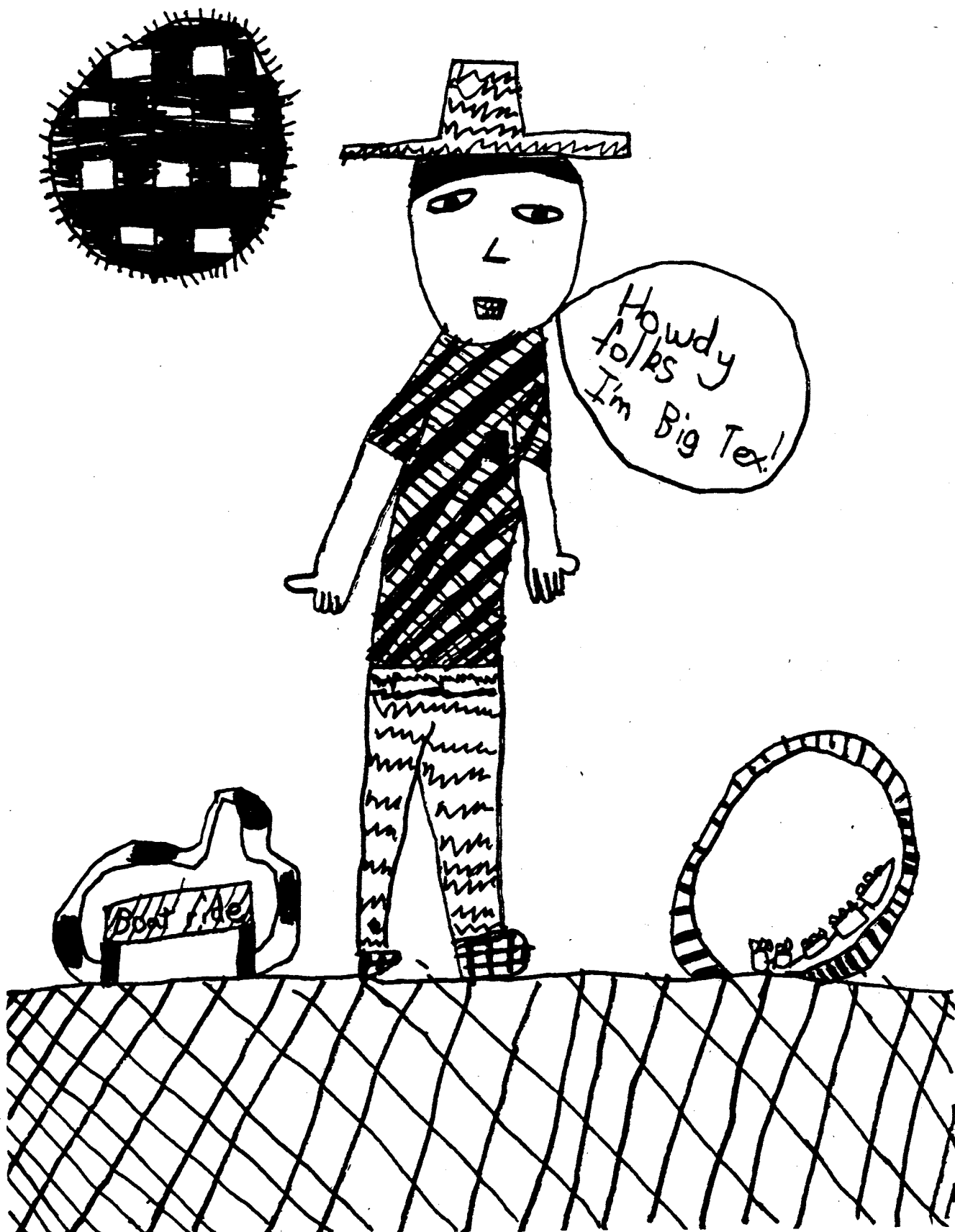
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 19, 1991.

TRD-9116179 Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: January 27, 1992

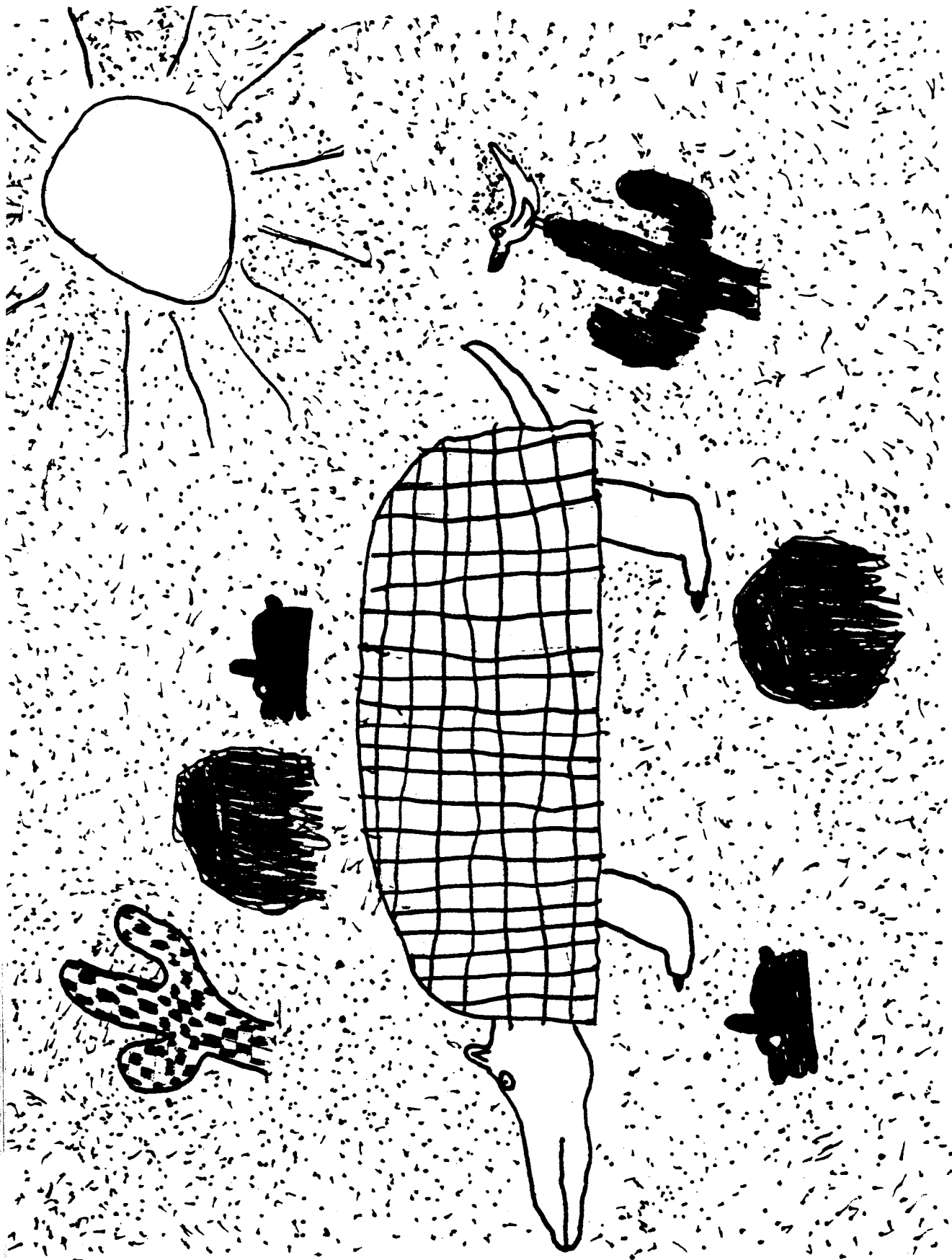
For further information, please call: (512) 463-8630



Name: William Dacus

Grade: 3

School: Hamilton Park Pacesetter, Richardson ISD



Name: Mark Parrett

Grade: 3

School: Hamilton Park Pacesetter, Richardson ISD

# Withdrawn Sections

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

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

### Chapter 28. Texas Agricultural Finance Authority; Loan Guaranty Program

#### • 4 TAC §28.3, §28.9

The Texas Department of Agriculture has withdrawn from consideration for permanent adoption proposed amendments to §28.3, §28.9 which appeared in the July 30, 1991, issue of the *Texas Register* (16 TexReg 4124). The effective date of the amendments to §28.3, §28.9 is December 18, 1991.

Issued in Austin, Texas, on December 18, 1991.

TRD-9116085

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: December 18, 1991

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

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## TITLE 16. ECONOMIC REGULATION

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

#### Chapter 64. Employers of Certain Temporary Common Workers

#### • 16 TAC §§64.61, 64.73, 64.81

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption a proposed new §§64.61, 64.73, 64.81 which appeared in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5765). The effective date of this withdrawal is December 20, 1991.

Issued in Austin, Texas, on December 20, 1991.

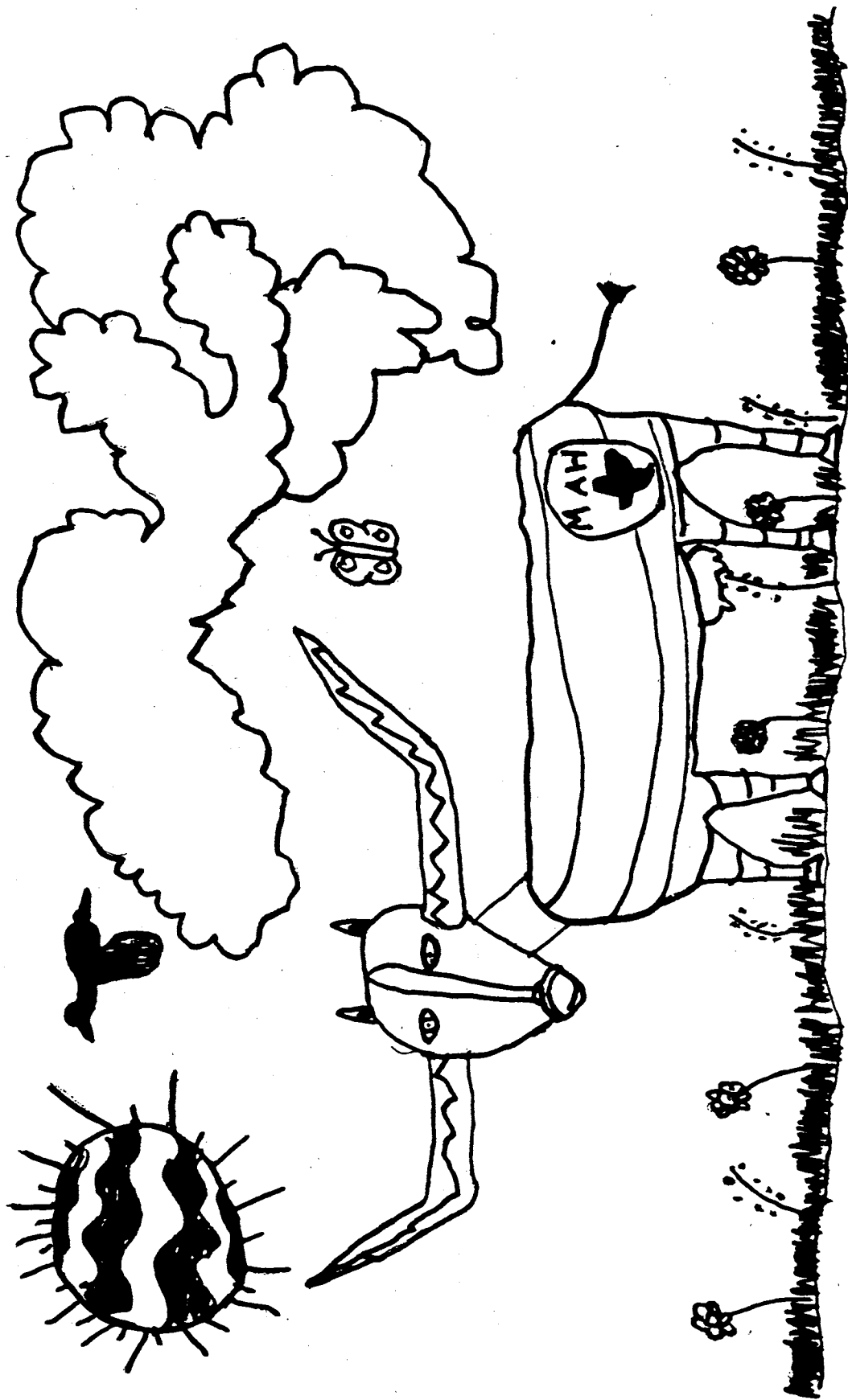
TRD-9116183

Elvis Schulze  
General Counsel  
Texas Department of  
Licensing and  
Regulation

Effective date: December 20, 1991

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

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Wavy, horizontal line representing a horizon or ground.

Name: Matt Hubbard

Grade: 3

School: Hamilton Park Pacesetter, Richardson ISD

# Adopted Sections

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

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

## TITLE 13. CULTURAL RESOURCES

### Part I. Texas State Library and Archives Commission

#### Chapter 7. Local Records

##### Microfilming Standards for Local Governments

###### • 13 TAC §§7.21-7.28, 7.30-7.32

The Texas State Library and Archives Commission adopts amendments to §§7. 21-7.28, 7.30-7.32. Sections 7.21, 7.22, 7.24-7.27 are adopted with changes to the proposed text as published in the November 1, 1991, issue of the *Texas Register* (16 TexReg 6191). Sections 7.32, 7.28, and 7.30-7.32 are adopted without changes and will not be republished.

Because of concern expressed by local governments that under some circumstances on film certificates of authenticity might jeopardize the admissibility of filmed records as evidence, the sections are amended to permit both on and off film certificates, with supporting system documentation.

Sections that are adopted with changes: Section 7.21: changed word "redetermined" to "predetermined" in definition of "Step-and-repeat system". Section 7.22(d): changed "filmed processed" to "film processed". Section 7.24: changed wording to clarify type of quality control testing required and what test results should indicate. Section 7.25: changed the title to clarify content of section. Changed the wording of the certification; changed the certification requirement to allow both on and off film certification; added requirement to maintain procedural, operational, and training manuals to ensure documentation of system activity; added a review of the microfilm program for compliance with rules. Section 7.26: changed wording to clarify section. Section 7.27: changed certification requirement to reflect option of on or off film certification.

Changes will allow local governments the option to use either on film or off film certificates of legality and authenticity.

Two commenters believed that on film certificates should be required to be used by all governments; four commenters believed that off film certification should be permitted to avoid certification being made before microfilm has been inspected; nine commenters stated that they would not have a problem using off film certificates; three commenters

believed that they would continue to use on film certificates as well as off film certificates; one commenter questioned whether jacket microfilm should not be accepted for recording and storage of permanent records; one commenter asked if the microfilm must be compared to the original document during the visual inspection.

Commenting in favor of the amendments were the Texas Municipal Clerks Association and City of Burleson.

The commission agreed with most comments and changes to the rules as published were made in response to them. The commission did not specifically disagree with any comments, but in some cases did not yet have adequate data to support desired changes.

The amendments are adopted under the Local Government Code, §204.004, which provides the Texas State Library and Archives Commission with the authority to adopt rules for standards and procedures for the microfilming of local government records.

**§7.21. Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these rules shall have the meanings defined in the Local Government Code, Title 6, Chapter 201, or the standards of the Association for Information and Image Management according to *Technical Report for Glossary of Micrographics* (TR2-1990 or latest revision).

**AIIM**—The Association for Information and Image Management.

**ANSI**—The American National Standards Institute.

**Archival record**—A record having a permanent retention period.

**Aperture card**—A card with a rectangular opening(s) into which 16mm/35mm microfilm frames can be inserted, mounted, or premounted.

**Archival storage conditions**—Environmental conditions suitable for preserving photographic film that is to be retained permanently.

**Batch**—A quantity of chemicals or film which has been prepared at one time, and which has been identified through labeling or through other means by the manufacturer as a batch or lot.

**CAD** (computer assisted design)—A method of creating microimages by computer-driven laser.

**Convenience film**—Microfilm copies of records created only for convenience of use and considered nonrecords under the Local Government Code, §201.003(8)(A).

**Custodian**—The appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

**Diazo**—Coated film containing sensitized layers composed of diazonium salts that react with couplers to form azo dye images.

**Dmax**—Measurement of maximum obtainable density taken from a completely exposed area of conventionally processed silver-gelatin film (i.e. leader or trailer).

**Essential record**—Any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

**Film**—Microfilm.

**First-generation film**—Film produced directly from a subject.

**Legible**—The quality of a letter or numeral which enables the observer to identify it positively and quickly to the exclusion of all other letters and numerals.

**Local government record**—Any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business, except for materials excluded under the Local Government Code, Chapter 201.

**Long-term film**—Film suitable for the preservation of records for a minimum of 100 years when stored under proper conditions, providing the original film was processed correctly.

**Long-term record**—A record for which the retention period on a records retention schedule is 100 years but less than permanent.

**Master negative**—The copy of microfilm stored offsite for security and used only for generating use copies.



Medium-term film—Film suitable for the preservation of records for more than 10 years but less than 100 years when stored under proper conditions, providing the original film was processed correctly.

Medium-term record—A record for which the retention period on a records retention schedule is more than 10 years but less than 100 years.

Medium-term storage conditions—Storage conditions meeting ANSI/AIIM standards to ensure a life of 100 years for medium-term film.

Microfilm—Roll microfilm, microfiche, computer output microfilm (COM), and all other formats produced by any method of microphotography or other means of miniaturization on film.

Microfilming—The methods, procedures, and processes used to produce microfilm.

Permanent film—Film that is suitable for the preservation of records having permanent value when the film is properly processed and stored under archival storage conditions, provided that the original images are of suitable quality.

Permanent record—A record for which the retention period on a records retention schedule is permanent.

Readable—The quality of a group of letters or numerals which makes them recognizable as words or whole numbers.

Records management officer—The person identified under the Local Government Code, §203.001 or designated under the Local Government Code, §203.025 as the records management officer.

Records retention schedule—A document issued by the Texas State Library and Archives Commission under authority of the Government Code, §441.158, establishing mandatory retention periods for local government records.

Records series—File unit(s) or document(s) arranged in accordance with a filing system or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or because of some other relationship arising out of their creation, receipt, or use.

Retention period—The minimum time that must pass after the creation, recording, receipt of a record, or the fulfillment of certain actions associated with a record before it is eligible for destruction.

Second-generation microfilm—A microfilm copy made from the master negative.

Short-term film—Film suitable for the preservation of records for 10 years when stored under proper conditions, providing the original film was processed correctly.

Short-term record—A record for which the retention period on a records retention schedule is 10 years or less.

Step-and-repeat system—A method of microfilming by which images are directly placed on an area of film according to a predetermined format, usually in orderly rows and columns.

Vesicular—Film in which the light-sensitive component is suspended in a plastic layer in which optical vesicles are created on exposure to form the image.

#### §7.22. General

(a) Where these rules do not specify a standard or procedure, ANSI/AIIM standards are the minimum requirements for all microfilming of local government records.

(b) The originals of records that have been microfilmed may not be destroyed prior to the expiration of their retention periods unless the microfilm has met minimum standards of the tests required under these rules.

(c) These rules apply to the microfilming of any local government record, including court case papers, which is to be maintained solely in microfilm format and to all microfilm which is created or maintained as a back-up or security copy of short-term, medium-term, long-term, or permanent records. These rules do not apply to convenience filming.

(d) Custodians must maintain, or require to be maintained, documentation identifying titles of records filmed, quality control tests conducted, the results of quality control tests, dates records filmed, disposition of records after filming, dates film processed, disposition of film, reduction ratio used, records series contained on each microfilm, and equipment on which each microfilm was filmed and processed. The documentation must be retained until final disposition of all microfilm documented in the log or equivalent.

(e) Chemicals, film, and processor used in processing must be compatible.

(f) The records custodian, records management officer, or other authorized representative of the governing body of a local government may make unannounced inspections of the microfilm facilities in which the master microfilm of the local government is filmed, processed, and/or stored.

(g) Master microfilm produced for a local government shall be the property of the local government and the local government shall have the same responsibilities for ensuring its management and preservation as it would have for the records under the Local Government Code, Title 6, Subtitle 6, if they were not microfilmed. If the master microfilm is to be stored by a service provider, the local government may demand and receive delivery of upon five working days' notice.

(h) If microfilmed records contain information to which access by the public is restricted or confidential, such information must be expunged from any microfilm copies or hard copies made available to the public.

#### §7.24. Tests and Other Methods of Inspection and Verification.

##### (a) General.

(1) With the exception of re-takes, if a defect is found on any microfilm, the microfilm immediately preceding and following the sample of microfilm on which the defect was found must be inspected. If a defect is found on those microfilms, the uninspected microfilm preceding and/or following those microfilms must be inspected image by image until all defective film has been identified.

(2) Water used in microfilm processing must meet the requirements in American National Standards Institute Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents (ANSI/AIIM MS23-1991 or latest revision).

(b) The following tests must be utilized in the production of all film.

##### (1) Methylene blue test.

(A) Methylene blue test for conventionally processed silver-gelatin film as specified in *American National Standard for Photography (chemicals)-Residual Thiosulfate and Other Chemicals in Films, Plates, and Papers-Determination and Measurement* (ANSI/ASC PH4.8-1985 or latest revision) must be followed.

(B) A test must be performed at least once each week during which processing is done on a test strip of approximately six inches from a master microfilm or on a process control strip. If processing is performed by a service bureau a test performed for one local government agency may satisfy this requirement for more than one local government.

(C) A test must also be performed whenever a batch of fixer or developer is changed, or when changes in processing such as replacement or addition of filter, water softener, or replenishing system are made, or when water is changed.

(D) Test test results must be obtained on a scheduled basis within 10 days of processing. If film fails to meet the standards established by these rules, it must be rewashed and retested within the 14 days of initial processing.

(E) Once a year, two test strips must be taken from the same microfilm; one must be sent to an independent testing laboratory and the other to the laboratory which performs the weekly test, for verification of test results.

(F) If either test result is greater than 0.014 gram per meter squared, the records custodian must identify and remedy the cause of the deviation from the required standard.

(2) Density test.

(A) The density test must be performed on all master microfilm.

(B) Testing procedures as specified in *American National Standards Institute Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1991 or latest revision) must be performed.

(C) Background density must be in accordance with *American National Standards Institute Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1991 or latest revision).

(3) Resolution test.

(A) The resolution test must be performed on all master microfilm.

(B) The resolution test must be conducted in accordance with *American National Standards Institute Practice for Operational Procedures/Inspection and Quality Control of First Generation, Silver-Gelatin Microfilm of Documents* (ANSI/AIIM MS23-1991 or latest revision).

(C) The resolution target must meet the *American National Standard Microcopying-ISO Test Chart Number 2-Description and Use in Photographic Documentary Reproduction* (ANSI/ISO 3334-1979 or latest revision) and/or *American National Standard Test Chart for Rotary Microfilm Cameras* (ANSI/AIIM MS17-1983 or latest revision) and/or *Standard for Information and Image Management-Recommended Practice for Identification of Microforms* (ANSI/AIIM MS19-1987 or latest revision). Photocopies may not be used.

(4) Visual inspection.

(A) Inspection must be completed within two weeks of completion of the methylene blue test.

(B) All film of records having medium-term, long-term, or permanent retention periods, or which are designated as essential records must be inspected image by image, by the records custodian or records management officer, or local government office, or independent testing facility under contract with the local government or custodian.

(C) Short-term film of non-essential records must be inspected at least every three meters (10 feet) of each third roll or every third fiche.

(c) If film processing is done by a service bureau, the local government must obtain a certified statement of the results of density, resolution, methylene blue, and visual inspection tests from the service bureau attesting to the accurate reproduction of records filmed.

(d) If microfilm is not to be stored by the service bureau which processed the film, the local government must obtain test results at the same time it obtains the microfilm. If the microfilm is stored by the service bureau which processed the film, the local government must receive the test results within 10 days of completion of the test(s). The custodian, records management officer, local government office, or independent testing facility under contract with the local government or custodian, must inspect the microfilm to results reported by the processor.

(e) An inspection of stored master microfilm must be conducted in accordance with *American National Standard for Photography (Film)-Processed Safety Film-Storage* (ANSI IT9.11-1991 or latest revision).

(1) A minimum of 1.0% of the total volume of microfilm of each local government office comprising a cross section of all microfilm (roll, jacket, microfiche, aperture card, COM, etc.) must be inspected for deterioration such as peeling emulsion, brittleness, film curl, discoloration, molding, and blemishes on the film.

(2) Of the microfilm selected, 70% shall never before have been inspected, 20% shall have been inspected during the immediately previous inspection, and 10% shall be samples of the oldest and newest film.

(3) An inspection of stored master microfilm must be conducted every two years, except if the microfilm has been stored under temperature and/or humidity conditions other than those required under these rules, it must be inspected yearly.

(4) Cans, boxes, and reels used to store the film must be inspected for evidence of rust, corrosion, and other deterioration.

(5) Master microfilm must not be inspected on a reader printer. Master microfilm must be inspected on a light box with rewinds or comparable equipment which will not scratch the film.

(6) The following information must be recorded for each inspection:

(A) the quantity and identification of microfilm inspected;

(B) the condition of the microfilm, including description of any deterioration such as peeling emulsion, brittleness, film curl, discoloration, molding, and blemishes on the film;

(C) the corrective action required (if necessary);

(D) the date(s) of inspection and signed certification of inspector;

(E) the date corrective action was completed.

(7) The inspection log must be maintained by year and within each year numerically according to microfilm identifier or number.

(8) If deterioration is found, a more extensive inspection must be conducted to locate all deteriorating film.

(9) Any deteriorating film must immediately be removed from the storage area and a new master microfilm created.

*§7.25. Certification and Documentation.*

(a) After the microfilm has been prepared, processed, and inspected the records custodian must complete and maintain a certificate of authenticity stating: "I (name of records custodian) acting for the (name of agency), a local government in the state of Texas, do hereby declare that I am the (RMO or custodian) of the (name of department) department records. The official records appearing on (identifier) microfilm are accurate reproductions of the record series entitled (record series title). These records were created in the regular course of business and microfilmed as part of a planned records management program adopted by (name of governing body), under provisions of the Local Government Code, §203.005 or §203.026."

(b) The certificate of authenticity must contain the printed or typed name of government, name of office, the name and

title of the records custodian, RMO, or deputy, and the date and place certified, and must be signed by the records custodian, RMO, or, if the inspector is a deputy of the custodian, it may be signed by the deputy.

(c) A procedure and operational manual must be prepared for the microfilm program and periodically updated so as to reflect current practice and at a minimum must include a description of:

- (1) purpose of microfilm program;
- (2) documentation maintained;
- (3) prepping;
- (4) camera/filming;
- (5) processing;
- (6) quality controls;
- (7) duplication;
- (8) storage; and
- (9) inspection of stored microfilm.

(d) Training manuals must be created and maintained for all staff in the microfilm program and periodically updated so as to reflect current practice. Proof of appropriate training and satisfactory completion of required training must be documented for all staff.

(e) The microfilm program must be reviewed yearly for compliance with the Local Government Code, Chapter 204 and the rules adopted under it.

#### *§7.26. Use of Editorial and Technical Targets.*

(a) A title page target must be included on each roll of microfilm and must identify the local government and subordinate organizational unit(s), the records which are included on the microfilm, title of the records (with identification of contents if not obvious from series titles), restriction or classification (if necessary), bibliographic information (if any), roll number, and date(s) of records being filmed.

(b) Restriction or classification targets, if used, must identify the office or agency authorizing the classification or restriction, the statutory or administrative authorization for the restriction or classification, the beginning record and ending record of the record series of which the classified or restricted items are a part, the date of filming, and the nature of the restriction or classification.

(c) A declaration by camera operator must state where, when, and by whom records were filmed, name and title of camera operator, the camera and the reduction ratio used.

(d) Whenever possible, targets must all face the same direction as the records being microfilmed. Whenever possible, the letters on the target title must be readable to the naked eye without magnification and the image on the film must be at least two millimeters (0.08 inch) high.

(e) If the condition of the original record is of poor quality and it is anticipated the images will not be legible and readable when displayed on a microfilm reader or when reproduced in paper copy, a target or stamp stating the reason for the poor image quality must be placed before or directly on the image(s).

#### *§7.27. Image Sequence.*

(a) The image sequence on roll microfilm must be:

- (1) leader (minimum of 700 millimeters (28 inches) of blank film);
- (2) retakes according to required sequence of subsection (d) of this section (if any);
- (3) density target and resolution target, in any order or combination;
- (4) title page;
- (5) records being microfilmed;
- (6) certificate of authenticity (if used on microfilm);
- (7) density target and resolution target, in any order or combination;
- (8) retakes according to required sequence of subsection (d) of this section (if any);
- (9) trailer (minimum of 700 millimeters (28 inches) of blank film).

(b) For non-essential and short-term microfilm, if the image sequence required in subsection (a) of this section is not used the following must be used:

- (1) density and resolution target, in any order or combination, must be on the microfilm or a test strip of the microfilm;
- (2) title page target;
- (3) if the film is updated, the title page target must be prior to the first image of the records being microfilmed.

(c) All microfilm produced for a local government must bear a unique number within the generating department.

(d) The filming sequence for retakes on all microfilm must be:

- (1) title target identifying the retake records;
- (2) the retake records;
- (3) certificate of authenticity (if used on microfilm).

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

Issued in Austin, Texas, on December 17, 1991.

TRD-9116141

Raymond Hitt  
Assistant State Librarian  
Texas State Library and  
Archives Commission

Effective date: January 9, 1992

Proposal publication date: November 1, 1991

For further information, please call: (512) 463-5440

### ◆ ◆ ◆ • 13 TAC §7.34, §7.35

The Texas State Library and Archives Commission adopts new §7.34 and §7.35, with changes to the proposed text as published in the October 25, 1991, issue of the *Texas Register* (16 TexReg 5937).

The new sections are adopted to ensure the physical protection and informational integrity of public information contained in local government records which have been microfilmed using aperture card/CAD or step-and-repeat systems.

The new sections will provide local governments with a consistent foundation upon which to base their microfilming programs as required by law. Changes from the proposed text are: §7.34. Aperture Card/CAD Systems. Deleted subsections (d) and (e) to permit on or off film certification. §7.35. Step-and-Repeat Systems. Deleted subsection (f)(3) and (f)(4); added a new subsection (f)(3) to permit on or off film certification.

Two commenters believed that on film certification should be required to be used by all governments; four commenters believed that off film certification should be permitted to avoid certification being made before microfilm has been inspected.

Commenting in favor of the new section was the Texas Municipal Clerks Association and City of Burleson.

The commission felt that the positions of all commenters could have merit in certain circumstances; therefore it elected to allow local governments the option to use either on film or off film certification.

The new section is adopted under the Local Government Code, §204.004, which provides that the Texas State Library and Archives Commission shall adopt rules for standards and procedures for microfilming of local government records.

#### *§7.34. Aperture Card/CAD Systems.*

(a) Standards for production, processing, testing, and storage of aperture cards are the same as those established in these rules for other microfilm formats, except as stated in this section.

(b) For medium-term, long-term, and permanent records master negatives

must be silver-gelatin microfilm in roll form.

(c) For short-term microfilm:

(1) a methylene blue test must be performed on a sample aperture card according to §7.24(b)(1) of this title (relating to Tests and Other Methods of Inspection and Verification);

(2) a density test must be conducted on a sample at a minimum of once every 250 cards or every 1,000 images, whichever is greater;

(3) a resolution test must be conducted on a sample at a minimum of once every 250 cards or every 1,000 images, whichever is greater;

(4) density and resolution targets must be on the microfilm or a test sample of the microfilm.

(d) Aperture cards must have the following information on label headings: name of government, office of origin, records series, and unique identifier.

(e) Adherence to the provisions of §7.26 of this title (relating to Use of Editorial and Technical Targets) and §7.27 of this title (relating to Image Sequence) is not required in the production of short-term aperture cards.

*§7.35. Step-and-Repeat Systems.*

(a) Standards for production, processing, testing, and storage of microfilm from a step-and-repeat system are the same as those established in these rules for other microfilm formats, except as stated in this section.

(b) Silver-gelatin microfilm in roll or microfiche form must be used for master negatives.

(c) A density test must be conducted at the beginning of each day of filming and at a minimum of once every roll or every 3,000 images.

(d) A resolution test must be conducted at the beginning of each day of filming and at a minimum of once every roll or every 3,000 images.

(e) Density and resolution targets must be on the microfilm or a sample of the microfilm.

(f) The following image sequence must be followed:

- (1) title page target;
- (2) records being microfilmed;
- (3) certificate of authenticity (if used on microfilm).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agen-

cy's legal authority.

Issued in Austin, Texas, on December 17, 1991.

TRD-9116140

Raymond Hitt  
Assistant State Librarian  
Texas State Library and  
Archives Commission

Effective date: January 9, 1992

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For further information, please call: (512) 463-5440

## Records Retention Schedules

### • 13 TAC §§7.121-7.127

The Texas State Library and Archives Commission adopts new §§7.121-7.127. New §7.125 and §7.127 are adopted with changes to the proposed text as published in the September 13, 1991, issue of the *Texas Register* (16 TexReg 5024). New §§7.121-7.124, and 7.126 are adopted without changes and will not be republished.

The justification of the new sections is to establish standards for the creation, approval, and distribution of records retention schedules for local government records; to amend the county records manual; and to adopt by reference the county records manual as amended and schedules for records common to all local governments, records of municipal and justice courts, records of property taxation, and records of elections and voter registration.

A change was made to §7.125 indicating that the records retention schedules are adopted. A change was made to §7.125 indicating an editorial shortening of the title of Local Schedule TX. Changes were made to §7.127 by adding paragraphs (28) and (29) to subsection (c). These changes were necessary to avoid conflict between a retention period in Local Schedule TX, changed as the result of public comment, and the same record in the county records manual.

The sections and the records retention schedules, as changed, were approved by the Local Government Records Committee, as required by the Government Code, §441.165, at an open meeting held in Austin on December 6, 1991.

The sections will function by providing local governments with mandatory minimum retention periods for records.

Comments were received from three local governments and two state agencies. None of the comments involved the text of the sections as published. The comments concerned suggested changes to the records retention schedules adopted by reference in §7.125. A commenter suggested a change to the proposed retention period for accounts receivable records detailing the receipt of monies due to the Comptroller of Public Accounts in Local Schedule GR. A commenter suggested the inclusion in Local Schedule GR of audiotapes of workshop sessions of governing bodies and a reconsideration of the permanent retention period assigned to affidavits of

publication of municipal ordinances in the same schedule.

Commenters suggested changes to the retention periods proposed for appraisal review board hearing case papers, exemption and special appraisal records, property value documentation, and tax rolls in Local Schedule TX. One commenter observed that the retention period for applications for local option election petitions in Local Schedule EL should be the same as that for the petitions.

Comments were received on various entries in Local Schedule LC pointing out that proposed retention periods were not long enough for the Comptroller of Public Accounts to complete statutory audits of the case papers and other records of justice and municipal courts.

Commenting against the section were the City of North Richland Hills, City of San Marcos, City of Taylor, Attorney General, and Comptroller of Public Accounts.

With a few exceptions, comments received concerning proposed retention periods in records retention schedules led to changes to those schedules. One commenter suggested that the retention period for affidavits of publication for municipal ordinances in Local Schedule GR be changed from permanent to five years for the reasons that the ordinances themselves are permanent and the special methods needed to preserve clipping proofs would be burdensome. The agency believes that the procedures set out in the Local Government Code, Chapter 52, and in most home-rule city charters requiring the publication in full or by caption of municipal ordinances before their enactment are directive in nature and failure to publish as required might place the validity of an ordinance into question. The agency does believe that in the event of a codification or re-codification of municipal ordinances, the affidavits of publication for the codified ordinances are no longer relevant to the proof of their validity as the notice by publication of the code itself validates all its provisions. The retention period was changed to permit that type of exception to the permanent retention requirement. The agency feels that photocopying is an effective solution to the problem of newspaper clipping proof yellowing and deterioration.

One commenter objected to four year retention periods for a number of records series of municipal courts and urged that the periods be lowered to three years. Based upon comments received from the Comptroller of Public Accounts, the agency is constrained from making the changes and must raise the retention periods to five years to satisfy the administrative needs of the Comptroller's Office in carrying out its statutory duty to audit case papers and other records of justice and municipal courts to verify the proper accounting of state court fees. The agency believes that the suggestion of the Comptroller of Public Accounts that the retention periods for docket books and logs of process issued by justice and municipal courts be reworded to five years from date of offense is unnecessary as the docketing of a case or the logging of process issuance must naturally follow the commission of the offense. A suggestion from the Comptroller's Office that the retention

period for reports of motor carrier convictions be raised from AV to five years was withdrawn following discussion with officials of that agency.

The new sections are adopted under the Government Code, §§441.158-441.160, and the Local Government Code, §202.001(b)(2). The Government Code §441.158(a), requires the Texas State Library and Archives Commission to prepare and distribute records retention schedules for local government records and to adopt the schedules by rule. The Government Code, §441.159 and §441.160, permit the commission to adopt rules amending the county records manual, whose retention periods for county records were validated and continued in effect by the Local Government Code, §441.159. The Local Government Code, §202.001(b)(2), permits the commission to exempt by rule certain records from records destruction procedures established by statute.

**§7.125. Adoption of Records Retention Schedules by Reference.** The following records retention schedules, required to be adopted by rule under the Local Government Code, §441.158(a), are adopted by reference. Copies of the schedules are available from the Local Records Division, Texas State Library, Box 12927, Austin, Texas 78711-2927; (512) 463-5478:

- (1) Local Schedule GR: Records Common to All Local Governments;
- (2) Local Schedule LC: Records of Justice and Municipal Courts;
- (3) Local Schedule TX: Records of Property Taxation;
- (4) Local Schedule EL: Records of Elections and Voter Registration.

**§7.127. Amendments to Records Retention Schedules and the County Records Manual.**

(a) An amendment to a retention period in a records retention schedule adopted under §7.125 of this title (relating to Adoption of Records Retention Schedules by Reference) or in the county records manual adopted under §7.126 of this title (relating to Adoption of County Records Manual by Reference) does not affect any caution statement associated with the retention period unless otherwise indicated in this section.

(b) The records descriptions and retention periods for records listed on pages B21 (personnel records only); B22 (purchasing agent files only); B99 (personnel records only); B116 (federal withholding records only); B117 (social security payments record only); B169 (personnel records only); B205 (personnel records only); B207-B250; B255-B261; B265-B267; B269-B273; B279; B285; and Auditor 1-Auditor 14 of the first edition of the county records manual are deleted.

(c) The records descriptions and retention periods for records listed in Volume 1 of the county records manual are amended as follows.

(1) The retention period for Item Number 1000-04 (Photographs and Recordings) is changed to: "Permanent. Caution: Most photographs and other nontextual media of the types described must be retained permanently for historical reasons; but latitude is allowed to the records management officer in an elective county office to determine to what extent a particular photograph, for example, documents the history and activities of the office or the county. If it is determined that it does not, it need be kept only as long as administratively valuable. Be certain that photographs and other non-textual media do not fall within other records series."

(2) Section (b) of the retention period for item number 1000-05 (Policy and Procedures Files) is changed to: "Type II-five years after superseded."

(3) The records descriptions and retention periods for the following records listed in Volume 1 of the county records manual are deleted: Item Numbers 1000-06 (Scrapbooks); 1150-01 (Applications and Petitions for Place on Ballot); 1150-02 (Certifications of Candidates); 1150-03 (Declarations of Intent to Run as Independent Candidate); 1150-04 (Declarations of Write- Candidacy); 1150-05 (Election Minutes); 1150-06 (Election Notices); 1150-07 (Election Orders and Proclamations); 1150-08 (Election Return Record); 1150-09 (Notices of Precinct Boundary Changes); 1150-10 (Orders of Appointment of Election Judges); 1150-11 (Poll Tax Exemption Certificates); 1150-12 (Poll Tax Receipts); 1150-13 (Lists of Qualified Voters); 1150-14 (Lists of Recommended Election Judges); 1350-01 (Absentee Voting Records); 1350-02 (Annual Reports of Unexpended Contributions); 1350-03 (Applications for Local Option Election Petitions); 1350-04 (Campaign Contribution and Expenditure Statements); 1350-05 (Certifications of Candidates); 1350-06 (County Election Returns); 1350-07 (Designations of Campaign Treasurers); 1350-08 (Federal Postcard Applications); 1350-09 (New Resident Registration Records); 1350-10 (Lists and Certifications of Party Candidates in Primary Elections); 1350-11 (Notices of Persons Elected as Party Officers); 1350-12 (Poll Lists); 1350-13 (Precinct Absentee Lists); 1350-14 (Precinct Convention Records); 1350-15 (Precinct Election Records); 1350-16 (Recount Committee Reports of Recount); 1350-17 (Recount Records); 1350-18 (Recount Supervisors' Reports); 1350-19 (Lists of Registered Voters); 1350-20 (Reports of Fraud in Constitutional Amendment Elections); 1350-21 (Statements of Compensation); 1350-22

(Withdrawal of Candidacy Requests), (Notices of Intent to Dispose of Public Records); 1850-08 (Notices of Intent to Dispose of Public Records); and 2000-04 (Notices of Intent to Dispose of Public Records).

(4) The retention period for Item Number 1100-07 (Commissioners Court Petitions) is changed to: "two years after consideration of the petition by the court."

(5) The retention periods for Item Numbers 1125-02 (Annual Fee Reports); 1125-20 (Monthly Expense Reports); 1125-21 (Prisoner Expense Reports); 1125-23 (Reports of Collections); 1125-24 (Treasurer's Monthly Reports); 1125-25 (Treasurer's Quarterly Reports) and section (a) of the retention period for Item Number 1125-05 (Auditor's Reports) are changed to: "three years from the end of the fiscal year to which the report relates."

(6) The retention period for Item Number 1125-06 (Banking Records) is changed to "five years from the end of the fiscal year to which the records relate."

(7) The retention period for Item Number 1125-07 (Bid Records) is changed to: "(a) Successful bids and requests for proposals, including invitations to bid, bid bonds and affidavits, bid sheets, and similar supporting documentation-three years after end of fiscal year of award. (b) Unsuccessful bids-two years. (c) Informal bid records, such as requests for quotations and estimates, for the procurement of goods or services for which state law or county policy does not require the formal letting of bids-one year."

(8) Section (b) of the retention period for Item Number 1125-08 (Bond Registers) and the retention periods for Item Numbers 1125-22 (Public Hospital Bond Record); 1175-08 (Road District Bond Record); 1200-10 (Bond Record) and 1900-07 (Bond Registers) are changed to: "Permanent."

(9) Section (a) of the retention period for Item Number 1125-10 (Claims) is changed to: "three years from the end of the fiscal year of date of payment."

(10) The retention periods for Item Numbers 1125-12 (Contracts, Leases, and Agreements) and 1125-14 (County Depository Pledge Contracts) are changed to: "four years after the expiration or termination of the agreement according to its terms."

(11) Section (a) of the retention period for Item Number 1125-15 (Deposit Warrants) is changed to: "three years from the end of the fiscal year to which the warrant relates."

(12) The retention period for Item Number 1175-02 (Highway Fund Annual Reports) is changed to: "Permanent."

(13) The retention periods for Item Numbers 1200-12 (Construction Contracts); 1200-22 (Construction Contracts); 1200-43 (Construction Contracts); 1200-49 (Construction Contracts); and 1200-69 (Construction Contracts) are changed to: "Permanent."

(14) The retention period for Item Number 1200-13 (Dissolution Tax Receipts) is changed to: "three years from end of the fiscal year of payment."

(15) The retention periods for Item Numbers 1225-05 (County Building Authority Quarterly Reports) and 1225-31 (Tuberculosis Control Board Quarterly Reports) and section (a) of the retention period for Item Number 1225-14 (Hospital Board or District Reports) are changed to: "three years from the end of the fiscal year to which the report relates."

(16) The retention period for Item Number 1225-15 (Insurance Policies on County Property) is changed to: "four years after expiration or termination of the policy according to its terms."

(17) The retention period for Item Number 1225-16 (Inventories of County Property) is changed to: "(a) Capital asset equipment or property inventories (including sequential number property logs)-three years after superseded. (b) Inventory records (parts and supplies)-one year."

(18) Sections (b) and (c) of the retention period for Item Number 1225-23 (Public Works Project Records) are changed to: "Permanent."

(19) The retention periods for Item Numbers 1250-03 (Cash Receipts); 1250-05 (Daily Cash Book or Reports); 1250-06 (Deposit Warrants); 1525-04 (Cash Receipts); 1525-05 (Daily Cash Book or Reports); sections (a)(2) and (b) of 1800-01 (Cash Receipts); 1800-05 (Fee Sheets); 1850-02 (Cash Receipts); 1850-03 (Daily Cash Book or Reports); and 1850-04 (Deposit Warrants) and section (b) of the retention period for Item Number 1125-15 (Deposit Warrants) are changed to: "three years from the end of the fiscal year to which the records relate."

(20) The retention periods for Item Numbers 1250-07 (Fee Book); 1525-06 (Fee Book); 1800-04 (Fee Book); and 1850-05 (Fee Book) are changed to: "five years from the end of the fiscal year to which the record relates."

(21) The retention period for Item Number 1325-18 (Reports of Death) is changed to: "Until receipt of death certificate."

(22) The records descriptions and retention periods for Item Numbers 1525-15 (Records Schedules and Implementation Plans) and 1850-10 (Records Sched-

ules and Implementation Plans) are changed to: "Records Management Records. (a) Records control schedules (including all successive versions of or amendments to schedules). Permanent. (b) Records destruction documentation—Records documenting the destruction of records under records control schedules, including requests submitted to the Texas State Library and Archives Commission for authorization to destroy unscheduled records or the originals of permanent records that have been microfilmed. Permanent. (c) Records inventories—Lists or inventories of the active and inactive records created or received by a county office. As long as administratively valuable. (d) Records management plans and policy documents—Plans and similar documents establishing the policies and procedures under which a records management program operates. Five years after superseded.

(23) The retention periods for Item Numbers 1575-04 (Civil Docket); 1575-05 (Civil File Docket, Type IV only); 1575-08 (Jury Docket); 1625-03 (Community Property Docket); 1625-06 (Guardians' Docket); 1625-12 (Probate Docket); 1625-13 (Probate File Docket, Type IV only); 1625-18 (Small Estates Docket); 1625-20 (Vital Statistics Docket); 1650-04 (County Court Docket); 1650-05 (County Court Docket, Type IV only); 1650-10 (Scire Facias Docket); 1725-02 (Alcoholism Docket); 1725-12 (Mental Illness Docket); 1725-15 (Mental Retardation Docket); and 1725-18 (Narcotics Addiction Docket) are changed to: "Permanent."

(24) The retention period for Item Number 1600-04 (Criminal Case Papers) is changed to: "(a) DWI and DUID cases—five years after dismissal or acquittal or 10 years after conviction, as applicable. (b) All other cases—five years after final judgment rendered or proceedings otherwise terminated in the case, except: (1) Warrants, capiases, summonses, subpoenas, witness attachments, and returns—four years after final judgment rendered or proceedings otherwise terminated. (2) Bail, personal, appeal, peace, cost, and other surety bonds, or certificates of deposit or affidavits in lieu thereof—three years after final judgment rendered or proceedings otherwise terminated in the case. (3) Bills of cost—four years after paid or waived. (4) Judgments and docket sheets—20 years if they meet the criteria of category 2 under Fingerprints on page 183."

(25) Section (b) of the retention periods for Item Numbers 1600-06 (Criminal File Docket) and 1650-05 (County Court Criminal File Docket) are changed to: "Type II file dockets—five years from the end of the fiscal year in which all fees and costs listed in the volume have been paid or waived."

(26) The retention period for Item Number 1800-02 (Cost Deposit Record) is changed to: "five years after last entry."

(27) The retention period for Item Number 1800-07 (Statistical Reports to Texas Judicial Council) is changed to: "three years."

(28) The retention period for Item Number 1375-03 (Delinquent Tax Record) is changed to: "Destroy at option."

(29) The retention period for Item Number 1375-17 (Tax Rolls) is changed to: "Destroy at option."

(d) The records descriptions and retention periods for the following records listed in Volume 2, Section 3 of the county records manual as separately published in 1988 are deleted: Item Numbers 1000-01 (Budget Requests and Working Papers); 1000-02 (Correspondence); 1000-03 (News Releases); 1000-04 (Photographs and Recordings); 1000-05 (Policy and Procedure Files); 1000-06 (Scrapbooks); 2350-01 (Administrative Hearing Case Papers); 2350-02 (Administrative Hearing Docket); 2350-03 (Civil Case Papers); 2350-04 (Civil Docket); 2375-01 (Small Claims Case Papers); 2375-02 (Small Claims Docket); 2400-01 (Bail Bond Record); 2400-02 (Criminal Case Papers); 2400-03 (Criminal Docket); 2400-04 (Examining Trial Case Papers); 2400-05 (Examining Trial Docket); 2400-06 (Reports of Record of Motor Carrier Convictions); 2400-07 (Traffic Conviction Abstracts); 2400-08 (Witness Record); 2425-01 (Appeal or Transfer Record); 2425-02 (Civil and Criminal Docket); 2425-03 (Execution Docket); 2425-04 (Jury Certificates); 2425-05 (Jury Time Book); 2425-06 (Process Registers); 2425-07 (Statistical Reports to Texas Judicial Council); 2450-01 (Cremation Permits); 2450-02 (Reports of Deaths Resulting from Traffic Accidents); 2450-03 (Fire Inquest Case Papers); 2450-04 (Fire Inquest Record); 2450-05 (Inquest Case Papers); 2450-06 (Inquest Record); 2475-01 (Birth and Death Record); 2475-02 (Birth Texas State Library and Archives Commission Local Records Certificates); 2475-03 (Birth Record); 2475-04 (Burial Transit Permit Records); 2475-05 (Death Certificates); 2475-06 (Death Certificates of Persons under 55); 2475-07 (Death Record); 2475-08 (Disinterment Permits); 2475-09 (Applications for Disinterment Permits); 2475-10 (Marriage Register); 2475-11 (Reports of Death); 2500-01 (Acknowledgment Record); 2500-02 (Annual Fee Reports); 2500-02a (Applications for Deputies); 2500-03 (Banking Records); 2500-04 (Cash Receipts); 2500-05 (Cost Deposit Record); 2500-05a (Reports to County Auditor); 2500-06 (Daily Cash Book or Reports); 2500-07 (Deposit Warrants); 2500-08 (Fee Book); 2500-09 (Legal Opinions); 2500-10

(Monthly Expense Reports); 2500-11 (Notices of Intent to Dispose of Public Records); 2500-12 (Open Records Applications); 2500-13 (Records Schedules and Implementation Plans); and 2500-14 (Reports of Collections).

(e) The records descriptions and retention periods for records listed in Volume 2 of the county records manual are amended as follows:

(1) The retention period for Item Number 1000-04 (Photographs and Recordings) is changed to: "Permanent. Caution: Most photographs and other nontextual media of the types described must be retained permanently for historical reasons, but latitude is allowed to the records management officer in an elective county office to determine to what extent a particular photograph, for example, documents the history and activities of the office or the county. If it is determined that it does not, it need be kept only as long as administratively valuable. Be certain that photographs and other nontextual media do not fall within other records series."

(2) Section (b) of the retention period for item number 1000-05 (Policy and Procedures Files) is changed to: "Type II—five years after superseded."

(3) The records descriptions and retention periods for the following records listed in Volume 2 of the county records manual are deleted: Item Numbers 1000-06 (Scrapbooks); 2275-23 (Notices of Intent to Dispose of Public Records); 2325-02 (Election Box Stub Certificates); retention period (a) only of 2325-08 (Lists of Registered Voters); 2350-01 (Administrative Hearing Case Papers); 2350-02 (Administrative Hearing Docket); 2350-03 (Civil Case Papers); 2350-04 (Civil Docket); 2375-01 (Small Claims Case Papers); 2375-02 (Small Claims Docket); 2400-01 (Bail Bond Record); 2400-02 (Criminal Case Papers); 2400-03 (Criminal Docket); 2400-04 (Examining Trial Case Papers); 2400-05 (Examining Trial Docket); 2400-06 (Reports of Record of Motor Carrier Convictions); 2400-07 (Traffic Conviction Abstracts); 2400-08 (Witness Record); 2425-01 (Appeal or Transfer Record); 2425-02 (Civil and Criminal Docket); 2425-03 (Execution Docket); 2425-04 (Jury Certificates); 2425-05 (Jury Time Book); 2425-06 (Process Registers); 2425-07 (Statistical Reports to Texas Judicial Council); 2450-01 (Cremation Permits); 2450-02 (Reports of Deaths Resulting from Traffic Accidents); 2450-03 (Fire Inquest Case Papers); 2450-04 (Fire Inquest Record); 2450-05 (Inquest Case Papers); 2450-06 (Inquest Record); 2475-01 (Birth and Death Record); 2475-02 (Birth Certificates); 2475-03 (Birth Record); 2475-04 (Burial Transit Permit Records); 2475-05 (Death Certificates); 2475-06 (Death Certificates of

Persons under 55); 2475-07 (Death Record); 2475-08 (Disinterment Permits); 2475-09 (Applications for Disinterment Permits); 2475-10 (Marriage Register); 2475-11 (Reports of Death); 2500-01 (Acknowledgment Record); 2500-02 (Annual Fee Reports); 2500-02a (Applications for Deputies); 2500-03 (Banking Records); 2500-04 (Cash Receipts); 2500-05 (Cost Deposit Record); 2500-05a (Reports to County Auditor); 2500-06 (Daily Cash Book or Reports); 2500-07 (Deposit Warrants); 2500-08 (Fee Book); 2500-09 (Legal Opinions); 2500-10 (Monthly Expense Reports); 2500-11 (Notices of Intent to Dispose of Public Records); 2500-12 (Open Records Applications); 2500-13 (Records Schedules and Implementation Plans); 2500-14 (Reports of Collections); 2550-13 (Notices of Intent to Dispose of Public Records); 2600-14 (Notices of Intent to Dispose of Public Records); 2750-07 (Notices of Intent to Dispose of Public Records); 2800-12 (Notices of Intent to Dispose of Public Records); 2875-11 (Notices of Intent to Dispose of Public Records); and 2925-08 (Notices of Intent to Dispose of Public Records).

(4) The retention periods for Item Numbers 2025-04 (Civil Docket); 2025-05 (Civil File Docket, Type IV only); 2025-08 (Jury Docket); 2050-03 (Delinquent Tax Docket); 2075-02 (Adoption Docket); 2075-06 (Child Support Docket); 2075-11 (Divorce Docket); 2075-16 (Neglected Children Docket); 2150-05 (District Court Docket); 2150-06 (District Court File Docket, Type IV only); and 2150-11 (Scire Facias Docket) are changed to: "Permanent."

(5) Section (a) of the exempt documents section of the retention period for Item Number 2125-05 (Criminal Case Papers) is changed to: "Warrants, capiases (except pro fine), summonses, subpoenas, subpoena applications, witness attachments, and returns—four years after final judgment rendered or proceedings otherwise terminated in the case."

(6) Section (b) of the exempt documents section of the retention period for item number 2125-05 (Criminal Case Papers) is changed to: "Bills of cost and capias pro fine—four years after paid or waived."

(7) Section (b) of the retention periods for Item Numbers 2125-07 (Criminal File Docket) and 2150-06 (District Court File Docket) are changed to: Type II file dockets—five years from the end of the fiscal year in which all fees and costs listed in the volume have been paid or waived."

(8) The retention period for Item Number 2125-10 (Expunged Criminal Records) is changed to: "(a) Expunged records arising from arrests for offenses committed

on or before August 31, 1989—one year from date of issuance of order of expunction. (b) Expunged records arising from arrests for offenses committed on or after September 1, 1989 that are not given to—Must be destroyed on the first anniversary of the date the order of expunction is issued. (By law, Texas Code of Criminal Procedure, §55.02(d))"

(9) The retention for Item Number 2175-14 (Statistical Reports to Texas Judicial Council) is changed to: "three years."

(10) The retention periods for Item Numbers 2275-05 (Banking Records); 2550-05 (Banking Records); 2600-05 (Banking Records); 2725-02 (Banking Records); 2800-03 (Banking Records); 2875-03 (Banking Records); and 2925-01 (Banking Records) are changed to: "five years from the end of the fiscal year to which the records relate."

(11) Sections (a)(2) and (b) of Items Numbers 2275-06 (Cash Receipts); 2550-06 (Cash Receipts); 2600-06 (Cash Receipts); 2725-03 (Cash Receipts); and 2800-04 (Cash Receipts) are changed to: "three years from the end of the fiscal year to which the records relate."

(12) The retention periods for Items 2275-07 (Child Support Payment Ledger) and 2275-09 (Cost Deposit Record) are changed to: "five years after last entry."

(13) The retention periods for Item Numbers 2275-11 (Court Reporter Expense Statements); 2275-12 (Daily Cash Book or Reports); 2275-14 (Deposit Warrants); 2275-16 (Fee Sheets); 2550-08 (Daily Cash Book or Reports); 2550-09 (Deposit Warrants); 2600-08 (Daily Cash Book or Reports); 2600-09 (Deposit Warrants); 2700-03 (Dockets); 2725-05 (Daily Cash Book or Reports); 2725-06 (Deposit Warrants); 2725-07 (Expense Account Journals or Reports); 2775-05 (Dockets); 2800-06 (Daily Cash Book or Reports); 2800-07 (Deposit Warrants); 2875-04 (Cash Receipts); 2875-06 (Daily Cash Book or Reports); and 2875-07 (Deposit Warrants) are changed to: "three years from the end of the fiscal year to which the records relate."

(14) The retention periods for Item Numbers 2275-15 (Fee Book); 2550-10 (Fee Book); 2600-11 (Fee Book); 2725-08 (Fee Book); 2800-08 (Fee Book); and 2875-08 (Fee Book) are changed to read: "five years from the end of the fiscal year to which the record relates."

(15) The records descriptions and retention periods for Item Numbers 2275-26 (Records Schedules and Implementation Plans); 2550-15 (Records Schedules and Implementation Plans); 2600-16 (Records Schedules and Implementation Plans); 2750-09 (Records Schedules and Implemen-



tation Plans); 2800-14 (Records Schedules and Implementation Plans); 2875-13 (Records Schedules and Implementation Plans) and 2925-10 (Records Schedules and Implementation Plans) are changed to: "Records Management Records. (a) Records control schedules (including all successive versions of or amendments to schedules). Permanent. (b) Records destruction documentation—Records documenting the destruction of records under records control schedules, including requests submitted to the Texas State Library and Archives Commission for authorization to destroy unscheduled records or the originals of permanent records that have been microfilmed. Permanent. (c) Records inventories—Lists or inventories of the active and inactive records created or received by a county office. As long as administratively valuable. (d) Records management plans and policy documents—Plans and similar documents establishing the policies and procedures under which a records management program operates. Five years after superseded.

(16) The retention periods for Item Numbers 2550-11 (Hot Check Fund Ledger); 2600-11 (Drug Forfeiture Fund Ledger); 2600-12 (Hot Check Fund Ledger); and 2725-13 (Work Release Salary Fund Ledger) are changed to: "10 years from the end of the fiscal year of last entry in ledger."

(17) The retention periods for Item Numbers 2650-28 (Work Schedules) and 2825-08 (Work Schedules) are changed to: "one year."

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

Issued in Austin, Texas, on December 17, 1991.

TRD-9116142 Raymond Hitt  
Assistant State Librarian  
Texas State Library and  
Archives Commission

Effective date: February 1, 1992

Proposal publication date: September 13, 1991

For further information, please call: (512) 463-5440

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission Of Texas

#### Chapter 23. Substantive Rules

#### Records and Reports

##### • 16 TAC §23.17

The Public Utility Commission of Texas adopts new §23.17, concerning procedures

for the administration of intraLATA compensation and interexchange carrier access charge revenues, with changes to the proposed text as published in the September 27, 1991, issue of the *Texas Register* (15 TexReg 5305).

The section as adopted recognizes the commission's authority over the structure of intraLATA revenue pooling, the exchange carrier association, and the distribution of revenues; provides a mechanism under which the industry may petition for approval of changes to intraLATA toll pooling procedures; provides for the establishment of an exchange carrier association; authorizes the development of procedures by that association for distribution of revenues which may allow for some local exchange carriers (LECs) to continue pooling while allowing others to withdraw from pooling; establishes general guidelines for the development of access charges between the LECs; allows for transition payments to be made by LECs; establishes commission review and approval of the initial procedures and subsequent changes to these procedures for intraLATA compensation; formalizes the record keeping process for commission review; and allows for formal inquiries into any issue pertaining to this section.

The following submitted comments in response to the September 27, 1991 *Texas Register* publication: Central Telephone Co. of Texas (CENTEL), Office of Public Utility Counsel (OPC), U.S. Sprint (Sprint), AT&T Communications of the Southwest, Inc (AT&T), and the Texas Association of Long Distance Telephone Companies (TEXALTEL). With the exception of TEXALTEL all comments were in support of the rule. The Texas Exchange Carriers Association (TECA) filed reply comments.

In its request for comments to the proposed rule, the commission asked parties to comment on what notification requirements if any, such as publication in the *Texas Register*, should apply to the initial filing of procedures and to any changes to procedures. Sprint and TEXALTEL filed comments on this specific issue. Sprint filed comments generally in support of the rule but suggested that the rule should be modified to provide for direct notice to all interexchange access customers in Texas. TEXALTEL recommended that the rule be modified to provide for notice of changes to procedures to any interested person who has requested notice of filings under the rule. This recommendation was based on the concern that such notice is necessary to ensure that interested parties have an opportunity to participate in the review process in a prompt and meaningful manner. In its reply comments TECA noted that, under the proposed rule, it is within the commission's discretion to determine the appropriate notice and that a requirement of notice of all proposed changes to all interexchange carriers (IXCs) would be burdensome because of the number of carriers in Texas.

The commission believes that the concerns of Sprint and TEXALTEL are appropriate and accordingly changes have been made to the text as published. The changes incorporated as §23.17(e)(3) require that the association

provide notice of filings under this rule to all interested parties who have specifically requested that the association notify them of changes to procedures. Accordingly, the association will on a quarterly basis inform all requesting parties of filings for changes to procedures under §23.17(e)(1) and will provide notice of applications for revenue distribution changes under §23.17(e)(2) to such parties at the time of filing. While it is correct that under the proposed rule it is within the commission's discretion to determine the appropriate scope of notice, this change will provide interested parties greater opportunities to participate promptly and meaningfully in the review process without creating a burdensome notice requirement.

Centel filed comments in support of the rule and did not recommend any changes to the proposed rule. AT&T generally supported the rule, believed that terms of the rule are in the public interest, and recommended three changes. AT&T recommended that the words "interim or" be inserted in subsection (d) between the words "upon" and "final." In support AT&T argued that the use of the phrase "final determination" would likely preclude interim revision of the initial procedures until after the docketed case is completed. In its reply comments TECA argued that the proposed change is semantic because the "reversal" language of the proposed rule at §23.17(d) indicates that the initial procedures may be modified even if the term "interim" is not used. In order to clear up any ambiguity pertaining to the meaning of this subsection, the commission after reviewing the comments has decided to adopt AT&T's proposed change.

AT&T recommended that the rule should provide for automatic docketing of proposed changes to the administrative procedures upon request of any party to the review. In support, AT&T argued that if the initial procedures are important enough to provide for automatic docketing, then any subsequent substantive change to those procedures may be equally deserving of such treatment. TEXALTEL also recommended that subsection (e)(2)(C)(iii) provide for mandatory docketing upon request of any participating party based on the examiner's recommendations. In its reply comments TECA observed that the commission should have the discretion to decide whether and when it wishes to act.

The commission declines to adopt AT&T's and TEXALTEL's suggested change. Rather than require mandatory docketing of proposed changes upon request of any party under §23.17(e), the commission reserves the discretion to act in such matters. In this regard the commission has changed §23.17(d) so that upon request of a commissioner a proceeding under §23.17(d) will be docketed. This change will provide the maximum discretion for the commission regarding review of the initial procedures. Changes to procedures are still subject to review and subject to docketing under the rule upon a showing of good cause. Parties have the option under §23.17(e) to participate by filing comments. The right to petition the commission for a formal inquiry into any matter under this rule remains an option under subsection (g).



AT&T recommended that subsection (f) pertaining to association records be modified to provide any party with the right of access to the association records during the course of any proceeding provided by subsections(d),(e), or (g). AT&T observed that a meaningful opportunity to participate in the review process under the rule would require a right of access to the association records. The commission also declines to adopt AT&T's suggested changes regarding access to association records. All parties have substantial rights of access to information which is relevant during docketed proceedings under the normal discovery rules. As TECA indicates, subsection (f) relates to the ongoing duty of the commission to keep fully informed of the association's operations in the same manner as the commission does for those of any LEC.

TEXALTEL was the only group to submit comments that were opposed to the rule. In its comments TEXALTEL stated that the rule is illegal, because adopting a rule that creates a commission-approved exchange carrier association to distribute pooled intraLATA revenues would constitute unlawful abdication of the commission's duties under the Public Utility Regulatory Act §§37, 38, and 39(a) to fix and regulate utilities' rates and overall revenues. TEXALTEL also indicated that the rule does not give the commission sufficient authority over pooling to enable it to control this area adequately. In its reply comments TECA indicated that the very purpose of the rule is to make clear the commission's jurisdiction over pooling. The commission observes that this section clearly establishes the commission's jurisdiction over intraLATA pooling and the exchange carriers association. By requiring the association to file all changes with the commission and by establishing a public interest review process for approval of initial pooling procedures and subsequent revenue distribution changes, the commission ensures that pooling will take place in a fair and reasonable manner without abdication of its statutory duties.

Without waiving its rights to challenge the commission's authority to promulgate this rule, TEXALTEL proposed several changes to the rule. Several proposed changes involved textual matters. TEXALTEL recommended that subsection (a) be modified to confirm the commission's authority over the pooled revenues and the exchange carrier association. TEXALTEL also recommended modifying subsection (c)(3) to make it clear that the access charges to be assessed the LECs will be established by the commission pursuant to law. In this regard the commission observes that the rule in its entirety makes clear the commission's jurisdiction in this area and that the rule expressly provides for access charges between LECs to be imposed at the same terms and conditions as access services are provided to IXC's in Texas.

TEXALTEL suggested that the rule be modified to provide for any interested person (as opposed to any affected person) to request docketing. The commission does not believe that it is necessary to provide for docketing upon the request of any interested person. Interested persons are not prevented from

providing comments by this rule; however, it is more appropriate for persons who demonstrate that they have a justiciable interest in a proceeding under this rule to have the right to make recommendations and, if necessary, invoke the full scope of the commission's powers of investigation as a request of docketing or a formal inquiry.

In this regard the commission is changing the proposed rule to clarify one aspect. It is the commission's intent to require a justiciable interest from persons requesting docketing under subsection (d) or subsection (e). Accordingly, those sections are changed to reflect this intent. It is clearer to provide for participation by persons who demonstrate a justiciable interest as opposed to an affected person. The commission considers OPC and the commission staff to have a justiciable interest in proceedings under this rule.

Several of TEXALTEL's recommendations involve requiring affirmative commission action on all changes to procedures. These recommendations involve adding language that the association file an application for approval of all changes before the changes are put into effect, that the examiner merely make a recommendation for the commissioners rather than a final determination, and, presumably because the commissioners will affirmatively act on all applications, extending the time that the commissioners have to make a ruling on the examiner's recommendations from 40 days to 60 days. Although OPC filed comments generally concurring with the rule as proposed, OPC also recommended that the rule be changed to require affirmative action by the commission for all changes to procedures under §23.17(e)(2). In support OPC argued that the commission should formally review each application so that the commissioners have the opportunity to raise any concerns they may have about changes to procedures. The commission notes that under the proposed rule the commission has the right to review and modify any examiner's recommendation under §23.17(e) and if necessary under §23.17(g) to initiate a formal inquiry into any changes to procedures made under §23.17(e)(1) or (2). Furthermore, it is anticipated, as indicated by TECA in its reply comments, that many changes to be made to the initial pooling procedures would likely be administrative changes for which affirmative action by the commission is unnecessary and may even be burdensome.

TEXALTEL recommended that the rule be changed to provide that the association be required to file quarterly reports with the commission and OPC concerning revenue distribution and also be required to file annual audited reports. The commission has the authority to request this information from the exchange carriers association at any time under the proposed rule and where appropriate may formally inquire into any matter affecting intraLATA pooling. However, the commission has determined that the association should file with the commission and OPC reports concerning the distribution of revenues on a semi-annual basis and audited reports on an annual basis. In order to evaluate the need for such filings, the general counsel shall recommend to the commission appropriate changes to the filing procedures for the semi-

annual reports and annual audit after reviewing one full year of such filings. Accordingly, these changes have been incorporated into the rule at subsection (f).

TEXTEL recommended subsection (g) should provide that the commission or the examiner may, when necessary, issue an interim order suspending the distribution of revenues or payments under the rule or suspending or changing the association's then existing procedures for management or distribution of revenues. Because the commission interprets subsection (g) as giving it this authority as a result of a formal inquiry, no change is necessary to the rule.

The new section is adopted under Texas Civil Statutes, Article 1446c, §16(a), which authorize the Public Utility Commission to make and enforce rules that are reasonably required in the exercise of its power and jurisdiction and §18, which grant the commission the authority and power to carry out the public policy of this state to protect the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just fair and reasonable rates.

#### *§23.17. Administration of IntraLATA Compensation and Interexchange Carrier Access Charge Revenues.*

(a) Purpose. The provisions of this section are intended to ensure that the revenues from Intrastate IntraLATA Message Toll Services (MTS), Wide Area Telecommunications Services (WATS), Private Line Services, and from the imposition of access charges for the origination or termination of these services when provided between local exchange carriers are distributed in a fair and reasonable manner; and that revenues from Intrastate Interexchange Carrier Access Charges (ICAC) are distributed in accordance with commission orders.

(b) Exchange carrier association. An association shall be established by the local exchange carriers of Texas in order to develop administrative procedures for the purpose set out in subsection (a) of this section. These procedures shall include procedures for the distribution of revenues from the ICAC and from Intrastate IntraLATA MTS, WATS, Private Line Services, and from the imposition of access charges for the origination or termination of these services when provided between local exchange carriers.

(c) Procedures for the distribution of revenues.

(1) Procedures developed by the association may allow for the pooling of those revenues described in subsection (a) of this section.

(2) Procedures developed by the association may allow local exchange carriers to withdraw or remain as participants in the pooling of those revenues described in subsection (a) of this section.

(3) Procedures developed by the association may provide for the imposition of access charges for the origination or termination of the services described in subsection (a) of this section when provided between local exchange carriers. Any such access charges shall be imposed at the same rates and under the same terms and conditions as access services are provided to interexchange carriers in Texas.

(4) Procedures developed by the association may provide for transition payments to be made by local exchange carriers.

(d) Initial filing of procedures. On the effective date of this section, the association shall file with the commission all administrative procedures developed for the purpose set out in subsection (a) of this section, including all procedures that are used to determine the distribution of those revenues described in subsection (a) of this section. Within 30 days of filing, a commissioner or any party that demonstrates a justiciable interest may request that the procedures be docketed, and upon such request the procedures shall be docketed. If the initial procedures are docketed within 30 days of filing, those initial procedures will remain in effect subject to modification or reversal upon interim or final determination of the commission or examiner. If the initial procedures are not docketed within 30 days of filing, those initial procedures will remain in effect unless changed pursuant to subsection (e) or (g) of this section.

(e) Changes to the procedures.

(1) The association must file with the commission any changes to the administrative procedures, including any changes to the procedures that affect the distribution of those revenues described in subsection

(a) of this section, that occur after the initial filing of procedures within 30 days of the implementation of such changes.

(2) For changes to the procedures that affect the distribution of those revenues described in subsection (a) of this section, the association must also file an application for approval of such changes within 30 days of their implementation. Such changes are subject to a final determination of the commission or the examiner. The commission or the examiner may in the final determination reverse or modify all or some of the changes. The commission shall process all applications for approval of changes using the criteria and procedures set out in subparagraphs (A)-(C) of this paragraph.

(A) Each application shall contain a certificate of service attesting that a copy of the request has been served upon the Office of Public Utility Counsel.

(B) Each application shall:

(i) clearly set forth the good cause for approval of the changes;

(ii) describe how the changes will affect the public interest;

(iii) identify the annual revenue impact on each local exchange carrier affected by the changes; and

(iv) state whether the annual revenue impact identified in clause (iii) of this subparagraph will require any local exchange carrier to request a rate increase under Texas Civil Statutes, Article 1446c, §43, within one year of the filing of the application.

(C) Each application shall be assigned a project control number, assigned to an examiner, and reviewed administratively.

(i) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 45 days after the filing of the application, the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall file written comments or recommendations concerning the application.

(ii) Within 90 days of filing, after administrative review, the presiding examiner shall approve, with modification, deny, or docket the application. The examiner may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed to determine whether good cause exists.

(iii) If the presiding examiner approves, approves with modification, or denies the application, any party that has participated in the review process may request, within 10 days of the examiner's ruling, that the application be docketed and upon such request, the application may be docketed.

(iv) If the presiding examiner has approved, approved with modification, or denied the application and the application has not been docketed pursuant to subparagraph (C) of this paragraph, a copy of the examiner's ruling shall be provided to the commission. The commission may, within 40 days of the examiner's rul-

ing, overrule the approval or denial and order that the application be docketed.

(3) Any party may request to be notified when changes are filed with the commission pursuant to paragraphs (1) and (2) of this subsection by contacting the association directly. The association shall inform all such parties when changes are filed as set out in subparagraphs (A) and (B) of this paragraph.

(A) The association shall inform all such parties that changes were filed pursuant to paragraph (1) of this subsection on a quarterly basis beginning with the first full quarter after final adoption of the initial procedures.

(B) The association shall inform all such parties that changes were filed pursuant to paragraph (2) of this subsection concurrent with any such filings with the commission.

(f) Association Records. The association shall maintain accurate historical and current records necessary to determine the appropriate management and distribution of those revenues described in subsection (a) of this section. The association shall make available to the Public Utility Commission of Texas and to the Office of Public Utility Counsel all books, records, studies, electronic databases, or other information upon request. The association shall file semi-annual reports with the commission and with the Office of Public Utility Counsel concerning the distribution of revenues under this rule and shall file annual audited reports on the association's management and distribution of revenues. After reviewing one full year of such filings, the general counsel shall recommend to the commission appropriate changes to the filing procedures for the semi-annual reports and annual audit. Any claims of confidentiality that accompany information provided to the Public Utility Commission of Texas or to the Office of Public Utility Counsel will be subject to the provisions of Texas Civil Statutes, Article 6252-17a.

(g) Formal inquiry. Upon its own motion, upon the motion of the general counsel, or upon petition of any person that demonstrates a justiciable interest, the commission may initiate a formal inquiry into any matter pertaining to this section.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116164

Mary Ross McDonald  
Secretary  
Public Utility Commission  
of Texas

Effective date: January 9, 1992

Proposal publication date: September 27, 1991

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

## Part IV. Texas Department of Licensing and Regulation

### Chapter 64. Employers of Certain Temporary Common Workers

- 16 TAC §§64.1, 64.10, 64.20, 64.60, 64.70, 64.71, 64.72, 64.80, 64.90, 64.91

The Texas Department of Licensing and Regulation adopts new §§64.1, 64.10, 64.20, 64.60, 64.70, 64.71, 64.72, 64.80, 64.90, and 64.91. Sections 64.1, 64.10, 64.20, 64.70, 64.71, 64.72, 64.80, 64.90, and 64.91, are adopted with changes to the proposed text published in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5765). Section 64.91 is adopted without changes and will not be republished.

The rules are necessary to implement Article 5221a-10, Employers of Certain Temporary Common Workers. Employers of certain temporary common workers shall be licensed by the department and comply with standards of practice, conduct, and ethics established by the department.

Comments were received suggesting temporary worker agencies be required to notify the department if they elect to cover their employees with worker's compensation and to provide certain information to the department as to their election regarding worker's compensation; that §64.72 be broadened to include notification to the license holder when the department is notified of service; that the word knowingly be added to the language specifying a violation of the rules; that the language indicating that an administrative penalty could be imposed for threatening a violation be changed to make clear that a violation must occur before an administrative penalty is imposed; that the word "consumer" be defined; that the phrase regarding, "...fire and extended liability coverage" be deleted in §64.71; that the word "illegal" be inserted before drug dealing where the term is used; and that §64.72 be changed to allow pick up or drop off of workers in the rear one-third of the premises.

Comments against certain sections were received from the City of Dallas, Texas Association of Temporary Services, Peakload, Inc., Link Personnel Services, Inc., Industrial Labor Service and the City of Pasadena.

The department disagrees with the suggestion that temporary worker agencies be required to notify the department if they elect to cover their employees with worker's compensation and to provide certain information to the department as to their election regarding

worker's compensation because it was determined this Act and these rules are not the appropriate place to deal with these issues and that the department is not the proper venue for addressing these issues. The department also disagrees with only allowing the pick up or drop off of workers in the rear one-third of the premises because it is unduly restrictive on the licensee and that the safety of workers can be safeguarded by the rule as proposed.

The new sections are adopted under Texas Civil Statutes, Article 5221a-10 and Article 9100, which provides the Texas Department of Licensing and Regulation with the authority to promulgate rules necessary to regulate the Employers of Certain Temporary Common Workers Act.

#### §64.1. Authority.

(a) The sections in this chapter are promulgated under the Employers of Certain Temporary Common Workers Act (Texas Civil Statutes, Article 5221a-10) and the Texas Department of Licensing and Regulation Act (Texas Civil Statutes, Article 9100).

(b) Regulatory, administrative, and licensing activities under this Act shall be carried out by the department and commissioner under Texas Civil Statutes, Article 9100.

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

Consumer—A common worker and/or a third party user as defined in the Act.

Registered agent—The individual or entity, designated by the temporary common worker employer to which all departmental communications or correspondence will be addressed.

Temporary common worker employer—A person that provides common worker employees to a third party user and includes both a temporary common worker agent and a temporary common worker agency.

#### §64.20. Licensing Requirements General.

(a) Each person desiring a state of Texas temporary common worker employer license shall request an application from the department. A separate application and fee must be submitted for each place of business or labor hall operated in the state.

(b) All applications shall be submitted on the form approved by the commissioner and provided by the department.

(c) The application for a license must:

(1) state the name, address, and telephone number of the applicant, including the trade name by which the applicant

does business; the names, addresses, and telephone numbers of all partners or corporate officers and the street address and telephone number of the place of business or labor hall to be operated by the license holder;

(2) state the name, address, and telephone number of the registered agent for the place of business or labor hall, including the office or position held by that person with the labor hall;

(3) contain a certification that the applicant has met fire and health standards established by state or federal law, or municipal ordinance for the labor hall location;

(4) certify that the applicant, if an individual, is 18 years of age or older; and

(5) include a certificate of insurance showing coverage as required in §64.71(c) of this title (relating to Other Duties of License Holder).

#### §64.60. Powers and Duties of the Department and Commissioner.

(a) All temporary common worker employers holding licenses shall be notified by the department, in writing, of the pending expiration of their license not later than the 30th day before the date on which the license expires.

(b) The department shall issue a license to an applicant who meets the application requirements and pays the fee as required in §64.80 of this title (relating to Fees-License).

(c) The commissioner shall enforce this Act pursuant to Texas Civil Statutes, Article 5221a-10 and Article 9100.

#### §64.70. Rights and Duties of a License Holder.

(a) A license holder must display the license in a conspicuous place in each place of business or labor hall operated by the license holder in the state.

(b) Each temporary common worker employer must notify the department, in writing, of any changes in information regarding location or ownership. The notification must be received by the department no later than 30 days after the change occurs.

(c) Each temporary common worker employer shall provide employees and consumers with access to the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

(d) The license holder must allow the department and representatives of other

governmental subdivisions, as part of an inspection or investigation, to enter the business premises during regular business hours and examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted. The department and representatives of other governmental subdivisions may inspect all records, books, and documents, whether paper or electronic, pertaining to the business operation.

(e) Each license holder must respond within two working days from its receipt of a written complaint from a consumer, and must attempt to resolve the complaint not later than the 10th day after the date of receipt. If the license holder is unable to resolve the complaint within the specified 10 days, the complaint shall be referred to the department.

#### *§64.71. Other Duties of License Holder.*

(a) A license holder shall promptly pay or distribute to the proper individuals all money or other things of value entrusted to the license holder by a third person for such purpose.

(b) A license holder shall comply with the terms and provisions of contracts entered into between the license holder and common workers and third party users.

(c) A license holder shall maintain a policy of insurance with an insurance carrier authorized to do business in the State of Texas in the amount of at least \$100,000/\$300,000, which insures the license holder against liability for damage to persons or property arising out of the license holder's operation, or ownership of any motor vehicle for the transportation of individuals in connection with their business, activities or operations as a temporary common worker employer. A certificate of the required insurance shall be filed with the department.

(d) All vehicles used for hire by a license holder for the transportation of individuals in his operations as a labor hall shall:

(1) have displayed prominently at the passenger entrance of the vehicle the name of the temporary common worker employer and the number of their license issued by the department;

(2) be equipped with one 10 pound BC fire extinguisher or two 5 pound BC fire extinguishers; and

(3) comply with all Texas vehicle inspection and safety regulations for the transportation of passengers for hire as defined by Texas Railroad Commission regulations.

(e) Each license holder shall, semimonthly or at the time of each payment

of wages, furnish each client/worker employed by the labor hall either a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing in detail each and every deduction made from the wages.

#### *§64.72. Additional Provisions for Labor Halls.*

(a) An attendant must be on the labor hall premises as an agent for legal process for the temporary common worker employer at all times that common workers are on the premises during normal business hours. In addition to service on the registered agent, any process involving a license holder shall be served, in person or by registered mail, on the license holder.

(b) The labor hall premises must have a lobby or waiting room with a floor area not less than 450 square feet. The lobby or waiting room must have adequate heat and ventilation.

(c) A labor hall may allow the pick up or drop off of workers only in a safe location.

(d) The sale of alcoholic beverages on the premises of a labor hall is prohibited.

(e) Prostitution, gambling, intoxication, illegal drug dealing, or illegal drug use on the premises of a labor hall is prohibited.

(f) Knowingly furnishing any person for immoral or illegal purposes, or causing to be sent any person to enter as a servant, inmate or for any purpose whatsoever, to any place of bad repute, house of ill fame, or assignation house, or any house or place of amusement kept for illegal or immoral purposes, the character of which the license holder could have ascertained by reasonable diligence, is prohibited.

(g) Knowingly sending a common worker to a place where a strike or lockout exists without first informing the common worker with a written statement of the existence of the strike or lockout is prohibited.

(h) Knowingly furnishing employment to a child, as defined by federal and state statute, in violation of statutes regulating the employment of children or the compulsory attendance at school is prohibited.

(i) A license holder shall comply with the provisions of all applicable Federal, State, and local statutes, ordinances, regulations or codes, including but not limited to Texas Department of Health Rules on Food Service Sanitation; mechanical, building, electrical, fire prevention and life safety codes.

(j) A license holder that violates a prohibition, statute, ordinance or code set forth above may have its license suspended

or revoked under §64.90 of this title (relating to Sanctions).

#### *§64.80. Fees-License.*

(a) The fee for the initial license and each renewal is \$300.

(b) This fee is not refundable.

#### *§64.90. Sanctions.*

(a) Any person may file a complaint with the commissioner alleging a violation of the Act or these rules. The commissioner shall investigate the alleged violation upon receipt of the complaint and may investigate any common worker employer as necessary.

(b) If it appears that a person is in violation of the Act or a rule or an order of the commissioner related to the Act, the commissioner may institute action under Texas Civil Statutes, Article 9100 by:

(1) giving notice to the license holder of the violation(s) by issuing a Preliminary Report; and

(2) providing a statement of the right of the person charged to a hearing on the occurrence of the violation and any proposed sanction and the terms thereof;

(3) not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination;

(4) if the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person;

(5) if the person charged fails to respond in a timely manner to the notice or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing;

(6) if an administrative hearing is held and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final, as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis

County district court as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19; and

(7) a motion for rehearing is a prerequisite for an appeal.

(c) The commissioner may institute an action with the Attorney General for collection of any assessed administrative penalty not received by the department.

(d) If it appears that a person is in violation of, or is threatening to violate, the Act or a rule or order of the commissioner related to the Act, the commissioner may request from the Attorney General an action for injunctive relief to restrain the person from continuing the violation.

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116182

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: January 10, 1992

Proposal publication date: October 18, 1991

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

## Chapter 66. Property Tax Consultants

### • 16 TAC §66.1, §66.2

The Texas Department of Licensing and Regulation adopts new §66.1 and §66.2, without changes to the proposed text as published in the September 17, 1991, issue of the *Texas Register* (16 TexReg 5128).

The new sections are necessary to establish procedures for making initial appointments to the Property Tax Consultants Advisory Council.

Applications will file a biographic data sheet with the executive director of the department. Applications will be considered by the Texas Commission of Licensing and Regulation.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 8886 and Article 9100, which provide the Texas Commission of Licensing and Regulation with the authority to appoint members of the Property Tax Consultants Advisory Council.

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116184

Larry E. Kosta  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: January 10, 1992

Proposal publication date: September 17, 1991

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

## TITLE 22. EXAMINING BOARDS

### Part XIV. Texas Optometry Board

#### Chapter 280. Therapeutic Optometry

##### • 22 TAC §280.5

The Texas Optometry Board adopts an amendment to §280.5, with changes to the proposed text as published in the October 18, 1991, issue of the *Texas Register* (16 TexReg 5812).

The rule establishes the list of drugs that may be prescribed by a therapeutic optometrist, in compliance with the Texas Optometry Act, §1.03. The list, recommended by the five-member advisory committee, established by the same statute, will inform the optometrists of the drugs that may be administered and prescribed, and further, will inform pharmacists of those drugs which may be prescribed by a therapeutic optometrist.

The list of drugs will inform the therapeutic optometrist of those drugs which may be administered and prescribed in order to be in compliance with the Act, §1.02 and §1.03, and also serves the purpose of informing therapeutic optometrists that a violation of the Act occurs if a therapeutic optometrist uses pharmaceutical agents not authorized by the board.

The Texas Medical and Texas Ophthalmological Associations argued that the listing of agents by classification or category was not specific enough and that the proposed rule had other technical deficiencies. The State Board of Pharmacy, Texas Optometric Association and other individuals made comments and argued that the proposed rule was sufficiently specific and that the other technical objections were without merit. The Texas Medical and Texas Ophthalmological Associations did suggest minor clarifying language which was incorporated into the rule.

Commenting in favor of the amendment were the Texas Optometric Association and the Texas State Board of Pharmacy. Commenting against the amendment were the Texas Medical Association and the Texas Ophthalmological Association.

The board determined that listing pharmaceutical agents by classification or categories did comply with statutory intent and did provide sufficient notice of the specific pharmaceuti-

cal agents authorized for use. As to other technical objections of the Texas Medical and Texas Ophthalmological Associations, the board found persuasive the written comments of Marcus Piccolo, O.D., dated December 17, 1991, which rebutted those comments. The other minor clarifying language to the proposed rule (as proposed by the Texas Optometric Association, Texas State Board of Pharmacy, Texas Medical Association and Texas Ophthalmological Association) was adopted by the Board.

The amendment is adopted under Texas Civil Statutes, Article 4552, §2.14 which provides the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

*§280.5. Prescriptions Written for Pharmaceutical Agents by the Therapeutic Optometrists.*

(a)-(f) (No change.)

(g) A therapeutic optometrist may prescribe all:

- (1) ophthalmic devices;
- (2) over-the-counter oral medications; and
- (3) topical pharmaceutical agents used for treating visual defects, abnormal conditions, and diseases of the human eye and adnexa, which are included in the following classifications or are combinations of agents in the classifications. No drug falling within one of the following categories may be used for the treatment of glaucoma in a manner that was not permitted by law on August 31, 1991. Antiviral drugs falling within the anti-infective classification are not included in the formulary:

(A) anti-allergy:

- (i) antihistamine;
- (ii) membrane stabilizer;

(B) anti-fungal:

- (i) imidazoles;
- (ii) polyenes;

(C) anti-infective:

- (i) aminoglycoside;
- (ii) anti-cell membrane;
- (iii) anti-cell wall synthesis

- (iv) anti-DNA synthesis;
- (v) anti protein synthesis (excluding chloramphenicol);

(vi) anti-ACHase;

(vii) cephalosporin;

(viii) agents affecting intermediary metabolism;

(D) anti-inflammatory;

(i) Nonsteroidal anti-inflammatory drug (NSAID);

(ii) Steroid;

(E) antiseptic;

(F) chelating agent;

(G) chemical cautery;

(H) cycloplegic; parasympatholytic;

(I) hyperosmotic;

(J) miotic;

(i) anti-ACHase;

(ii) parasympathomimetic;

(K) mucolytic;

(L) mydriatic: sympathomimetic (Alpha 1 agonists only);

(M) vasoconstrictor: sympathomimetic (Alpha 1 agonists only)

(h) This formulary specifically list the types of drugs which may be prescribed by a therapeutic optometrist. Subject to the anti-glaucoma and anti-viral limitations described in subsection (g) of this section, a therapeutic optometrist may possess and administer any topical ocular pharmaceutical agent which has a legitimate diagnostic or therapeutic use.

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

Issued in Austin, Texas, on December 18, 1991.

TRD-9116115

Lois Ewald  
Executive Director  
Texas Optometry Board

Effective date: January 8, 1992

Proposal publication date: October 18, 1991

For further information, please call: (512) 835-1938

## TITLE 28. INSURANCE Part I. Texas Department of Insurance

### Chapter 5. Property and Casualty Insurance

#### Subchapter E. Texas Catastrophe Property Insurance Association Standard Policy Forms—Windstorm and Hail

##### • 28 TAC §5.4201

The State Board of Insurance of the Texas Department of Insurance adopts an amendment to §5.4201, without changes to the proposed text as published in the September 20, 1991, issue of the *Texas Register* (16 TexReg 5197).

Section 5.4201 concerns the standard Texas Catastrophe Property Insurance Association forms, windstorm and hail. The amendment is necessary to provide a mandatory form to incorporate new provisions into the Texas Catastrophe Property Insurance Policy—Windstorm and Hail and the Texas Special Mobile Home Windstorm and Hail Policy regarding the prompt payment of claims as set out under the Insurance Code, Article 21.55, as provided by House Bill 2, enacted by the 72nd Texas Legislature.

The new Form Number TCPIA-29, Mandatory Endorsement adds provisions which set forth specific actions to be taken by the insured and the insurer within designated time periods for the prompt payment of claims.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Articles 21.49 §8, which authorizes the State Board of Insurance to approve policy forms and endorsements for the Texas Catastrophe Property Insurance Association.

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116190

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

Effective date: January 10, 1992

Proposal publication date: September 20, 1991

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

## Subchapter E. Texas Catastrophe Property Insurance Association

### Manual

#### • 28 TAC §5.4501

The State Board of Insurance adopts an amendment to §5.4501, without changes to the proposed text as published in the October 25, 1991, issue of the *Texas Register* (16 TexReg 6037).

Section 5.4501 concerns the manual of rules and regulations for insurance coverage effective through the Texas Catastrophe Property Insurance Association. The amendment is necessary to provide proper references in the manual to the maximum limits of liability, as set forth in House Bill 2, enacted by the 72nd Regular Session of the Texas Legislature, which are applicable to risks insured by the association. The amendment also provides a new rule in the manual to reflect that limits of liability effective 9-1-91 for a risk insured on or after 9-1-91 may not be required to be reduced if the risk was insured by the TCPIA for a greater limit of liability prior to 9-1-91.

The amendments to the manual set forth the maximum limits of liability to be provided by the association and the specific rules governing the application of those limits in writing insurance through the association.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Articles 21.49, §8, which authorizes the State Board of Insurance to approve manuals of classifications, rules and rates for the Texas Catastrophe Property Insurance Association.

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

Issued in Austin, Texas, on December 20, 1991.

TRD-9116191

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

Effective date: January 109, 1992

Proposal publication date: October 25, 1991

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

## TITLE 34. PUBLIC FI- NANCE

### Part IV. Employees Retirement System of Texas

#### Chapter 87. Deferred Compensation

##### • 34 TAC §§87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.17, 87.19, 87.21

The Employees Retirement System of Texas adopts amendments to §§87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.17, 87.19, and 87.21, concerning deferred compensation. Section 87.17 is adopted with changes to the proposed text as published in the November 8, 1991, issue of the *Texas Register* (16 TexReg 83). Sections 87.1, 87.3, 87.5, 87.7, 87.9, 87.11, 87.13, 87.15, 87.19, and 87.21 are adopted without changes and will not be republished.

Administration of the deferred compensation program began on January 1, 1991, by ERS. During this initial period of administration, numerous amendments have been necessary to properly administer the program.

The amendments will allow ERS to effectively and efficiently administer the deferred compensation program. State employees who choose to participate in this program will benefit by virtue of these rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 6252-3g, §2.45, which provide the Employees Retirement System of Texas with the authority to adopt rules, regulations, plans, and procedures to carry out the purposes of this Act.

#### §87.17. Distributions.

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

(c) Content of a distribution agreement.

(1) A distribution agreement must contain, but shall not be limited to:

(A) identifying information concerning the participant, including the date of birth and social security number of the participant;

(B) (No change.)

(C) the type of qualified investment product from which distributions will be made, including policy/certificate/or account number;

(D)-(H) (No change.)

(I) beneficiary information, including date of birth(s) and social security number(s).

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

(d) Commencement of distributions. Notwithstanding anything in a distribution agreement:

(1) (No change.)

(2) the latest a participant may begin receiving a distribution is the later of:

(A) April 1st of the calendar year following the calendar year in which the employee attains age 70.5; or

(B) (No change.)

(e) Filing of distribution agreements by participants.

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

(3) A distribution agreement must be filed:

(A) with the participant's agency coordinator; and

(B) (No change.)

(4) If a participant complies with paragraphs (2) and (3) of this subsection, the relevant agency coordinator shall review the distribution agreement for compliance with the sections in this chapter.

(5) If the distribution agreement complies with the sections in this chapter, the agency coordinator shall sign and send the agreement to the plan administrator. The agency coordinator shall ensure that the plan administrator receives the signed distribution agreement no later than the 60th day after the occurrence of the event that entitles the participant to the distribution.

(6) If a participant does not comply with paragraphs (2) and (3) of this subsection, the relevant agency coordinator shall submit a written request to the plan administrator for an immediate lump-sum distribution to the participant of all the participant's deferrals and investment income. Proof that the agency coordinator notified the participant concerning the necessity to file a distribution agreement must accompany the written request. The agency coordinator shall ensure that the plan administrator receives the request and proof no later than the 30th day after the occurrence that entitles the participant to the distribution.

(7) Notwithstanding anything to the contrary in this subsection, a participant who has not separated from service and who has reached age 70.5 must file a distribution agreement only if he wants distributions to begin to him. The distribution agreement must be filed with the participant's agency coordinator. The agency coordinator shall review and forward the distribution agreement in accordance with paragraphs (4) and (5) of this subsection.

(f) Filing of distribution agreements by beneficiaries.

(1) (No change.)

(2) The beneficiary named in a participant's participation agreement, change agreement, or distribution agree-

ment must ensure that the participant's agency coordinator receives the beneficiary's distribution agreement by no later than the 88th day after the participant's death.

(3) The requirements in subsection (e) of this section apply to the distribution agreements of beneficiaries except an agency coordinator must ensure that the plan administrator receives a distribution agreement by no later than the 90th day after the participant's death.

(g) (No change.)

(h) Review of distribution agreements by the plan administrator. The plan administrator shall review each distribution agreement received from an agency coordinator to ensure that:

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

(i) Amendments of distribution agreements.

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

(4) Beneficiaries.

(A) The primary and secondary beneficiaries named in a distribution agreement may be changed at anytime by filing a change agreement with the agency coordinator of the state agency at which the participant was employed.

(B) Upon receipt of the change agreement, the agency coordinator shall send the agreement to the plan administrator.

(C) (No change.)

(5) (No change.)

(6) Transfers after a distribution has begun.

(A) (No change.)

(B) The distribution agreement of the participant or beneficiary may be amended only to change the name or type of qualified investment product or qualified vendor listed in the agreement.

(C) (No change.)

(7) Procedures for amending a distribution agreement.

(A) A participant or beneficiary who wants to amend his distribution agreement must file an amended distribution agreement with his agency coordinator. The amended distribution agreement must contain the word "Amended" at the top of the agreement.



(B) Upon receipt of the amended distribution agreement, the agency coordinator shall promptly review the agreement for compliance with the sections in this chapter.

(C) If the amended distribution agreement does not comply with the sections in this chapter, the agency coordinator shall promptly return the agreement to the participant or beneficiary for corrections.

(D) If the amended distribution agreement complies with the sections in this chapter, the agency coordinator shall immediately sign the agreement and send it to the plan administrator.

(E) After the plan administrator receives a signed distribution agreement from an agency coordinator, the plan administrator and the qualified vendor covered by the agreement shall take the steps specified in subsections (h) and (j) of this section.

(8) (No change.)

(j) (No change.)

(k) Emergency withdrawals.

(1)-(8) (No change.)

(9) If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the TexaSaver plan for a 12-month period following the approval.

(10) The plan administrator may not approve an emergency withdrawal request from a primary or secondary beneficiary.

(l)-(p) (No change.)

(q) Distributions to missing persons.

(1) (No change.)

(2) When the plan administrator does not know the location of a participant or beneficiary, the agency coordinator for the participant or beneficiary must send a certified letter to the last known address of the participant or beneficiary.

(3) If the certified letter does not result in the discovery of the location of the participant or beneficiary, the agency coordinator shall inform the plan administrator and provide proof to the plan administrator that the certified letter was sent.

(4) Upon receiving the notification and proof from an agency coordinator, the plan administrator may direct that all benefits due the participant or beneficiary

be deposited in the deferred compensation fund or a qualified investment product that the plan administrator has specifically designated for this purpose.

(r)-(s) (No change.)

(t) Federal withholding and reporting requirements.

(1) A qualified vendor shall file all reports required by the Internal Revenue Service (IRS) when any deferrals and investment income are distributed or otherwise made available to a participant or beneficiary. Payments made to a participant during the participant's life must be reported as taxable wages on an IRS Form W-2, or another appropriate form which may be hereafter promulgated by the IRS. Pursuant to the provisions of Internal Revenue Service Revenue Ruling 86-109 (1986-2 CB 196), payments to the beneficiary of a deceased participant must be reported on IRS Form 1099-MISC (or another appropriate form which may be hereafter promulgated by the IRS) as taxable income of the beneficiary.

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

(4) Federal tax withholding is mandatory for distributions to participants. A qualified vendor shall accurately determine any amounts to be withheld for federal taxes based on a W-4 submitted by the participant at the time of a distribution. If no W-4 is provided, the participant must be considered single with no dependents. The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the Internal Revenue Code of 1986, §457.

(5) Total death benefits, including life insurance proceeds, are taxable as ordinary income to the beneficiary and must be reported on a Form 1099-MISC in accordance with paragraph (1) of this subsection.

(6) A qualified vendor shall mail a copy of all reports filed with the Internal Revenue Service about a participant or beneficiary to the participant's or beneficiary's home address.

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116186

Charles D. Travis  
Executive Director  
Employees Retirement  
System of Texas

Effective date: January 10, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 867-3336

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICF-MR)

##### Subchapter D. Reimbursement Methodology

The Texas Department of Human Services (DHS) adopts the repeal of §27.417 and an amendment to §27.413, concerning reimbursement methodology. The amendment to §27.413 is adopted with changes to the proposed text as published in the September 20, 1991, issue of the *Texas Register* (16 TexReg 5203). The repeal of §27.417 is adopted without changes and will not be republished.

The justification for the repeal and amendment is to revise the reimbursement methodology for the special children's facilities, which currently are being reimbursed under the case mix payment pilot project.

The repeal and amendment will function by enabling providers to have a better understanding of the reimbursement methodology. The resulting rates will more closely reflect the direct care costs incurred by providers to care for children.

DHS received written comments on the proposal from the Texas Health Care Association.

Comment: The commenter objected to the provision which disqualifies special children's facilities from the additional supplemental reimbursement for heavy care clients.

Response: DHS is not revising the proposed section in response to this comment because the facility-specific rates for the special children's facilities ensure that all projected total costs are covered, within limits. This methodology eliminates the need for the supplemental reimbursement for heavy care clients.

Comment: The commenter expressed the view that the special children's facilities' projected costs should be multiplied by 1.07 to determine the total reimbursement rate.

Response: DHS is not revising the proposed section in response to this comment because providers will be reimbursed for all projected costs, within limits. The amended reimbursement methodology contains a provision to multiply projected costs by 1.03 for qualifying providers.

Several revisions have been made to the proposed amendment as a result of discussions with the commenter.

In the proposed amendment, nonresident care costs were reimbursed based on the statewide uniform rate component. DHS has revised the section to reimburse total costs, which includes nonresident care costs, on a facility-specific basis.

The proposed amendment specified that a 3.0% incentive factor would be applied to the



median resident care cost component for all facilities in the large Level V or large Level VI class of service. The revised amendment specifies that the 3.0% incentive factor is applied to qualifying providers' projected total costs. To qualify for this incentive factor, a provider's projected total daily costs must be greater than the uniform rate for large facilities, but not more than 110% of the uniform rate.

A provision in the revised amendment stipulates that providers with projected daily costs greater than 110% of the uniform rate for large facilities receive their projected daily costs only, with no incentive factor, with total reimbursement limited to a maximum of 150% of the total uniform rate.

Also, a new provision in the amended section requires that a selected facility must continue to have seven or more Medicaid-contracted beds to be eligible for the special children's facility rate.

The commenter notified DHS that the concerns expressed in his written comments had been met as the result of the discussions.

The effect on state government for the first five-year period the adopted amendments to §27.413 will be in effect is an estimated additional cost of \$18,370 for fiscal year 1992; \$26,477 for fiscal year 1993; \$27,624 for fiscal year 1994; \$28,967 for fiscal year 1995; and \$30,324 for fiscal year 1996.

#### • 40 TAC §27.413

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

#### §27.413. Rate Setting Methodology.

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

(c) Rate determination. The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under the provisions of Chapter 24 of this title (relating to Reimbursement Methodology). The Texas Board of Human Services determines particular reimbursement rates for each class of ICF-MR provider by class of service based on consideration of DHS staff recommendations. To develop a separate set of reimbursement rate recommendations for each class of service within each provider class, DHS staff apply the following procedures.

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

(3) Alternate children's facility reimbursement rates for selected children's facilities are determined as follows, effective January 1, 1992.

(A) Definition of children. When referred to in this section, children are persons under 22 years of age.

(B) Determination of eligibility. To be considered eligible for alter-

nate children's facility reimbursement rates, a facility must be one of the selected facilities listed in clause (i) of this subparagraph and must meet the definition of a large children's facility as defined in clause (ii) of this subparagraph.

(i) Selected facilities. Selected facilities must be one of the following facilities covered by the Royal Thomas v. Marlin Johnston lawsuit Settlement Agreement:

(I) Ada Wilson Hospital, Vendor Number 3730;

(II) The Children's Center of Austin, Vendor Number 3731;

(III) Thomas Care Center, Vendor Number 3747;

(IV) Human Development Center, Vendor Number 3751;

(V) Crossroads Development Center, Vendor Number 3756; and

(VI) Denton Development Center, Vendor Number 3764.

(ii) Definition of children's facility. When referred to in this section, a children's facility is a facility which maintains a census of no less than 85% children and maintains at least seven Medicaid-contracted beds. A selected facility will automatically lose eligibility and be paid under the uniform statewide reimbursement rate when the facility's census falls below 85% children, or when the facility's number of Medicaid-contracted beds falls below seven.

(C) Determination of alternative children's facility rates. An eligible children's facility is reimbursed in the following manner.

(i) Facilities with projected total per diem costs which are less than the total uniform rate for the facility's class of service are reimbursed at that uniform rate.

(ii) Facilities with projected total per diem costs which are greater than the total uniform rate for the facility's class of service, but less than or equal to 110% of that uniform rate, receive their projected total per diem costs multiplied by an incentive factor of 1.03.

(iii) Facilities with projected total per diem costs which are greater than 110% of the total uniform rate for the facility's class of service receive their projected total per diem costs only, with no incentive factor, up to a maximum of 150

percent of the total uniform rate for the facility's class of service.

(iv) Facilities with projected total per diem costs which are greater than 150% of the total uniform rate for the facility's class of service are reimbursed at 150% of the total uniform rate for that class of service.

(D) Additional supplemental reimbursement. Since provision is made to ensure that reasonable and necessary costs are covered, and an opportunity for an incentive is provided, the selected children's facilities covered by the Royal Thomas v. Marlin Johnston lawsuit Settlement Agreement do not qualify for additional supplemental reimbursement for heavy care clients as determined under subsection (f) of this section.

##### (d)-(f) (No change.)

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116176

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

Effective date: January 9, 1992

Proposal publication date: September 20, 1991

For further information, please call: (512) 450-3765

## Subchapter D. Reimbursement Methodology

### • 40 TAC §27.417

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

#### §27.417. Case/Mix Payment Pilot Project.

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

Issued in Austin, Texas, on December 19, 1991.

TRD-9116177

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

Effective date: January 9, 1992

Proposal publication date: September 20, 1991

For further information, please call: (512) 450-7236

# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

## Texas Department of Criminal Justice, Board of Pardons and Paroles

**Thursday-Friday, January 2-3, 1992, 10 a.m.** The Board of Pardons and Paroles of the Texas Department of Criminal Justice will meet at 2503 Lake Road, Suite #9, Huntsville. According to the agenda summary, a panel (composed of three board members) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2744.

**Filed:** December 20, 1991, 2:23 p.m.

TRD-9116268

**Monday-Friday, January 6-10, 1992, 10 a.m.** The Board of Pardons and Paroles of the Texas Department of Criminal Justice will meet at 2503 Lake Road, Suite #9, Huntsville. According to the agenda summary, a panel (composed of three board members) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

**Contact:** Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2744.

**Filed:** December 20, 1991, 2:24 p.m.

TRD-9116269

## Texas Commission on Fire Protection

**Wednesday-Friday, January 8-10, 1992, 9 a.m.** The Texas Commission on Fire Protection will meet at the Red Lion Hotel, I-

35 at US 290, Austin. According to the agenda summary, the commission will discuss and possibly approve the order naming Fire Protection (Sprinkler) Advisory Council and order naming member to Key Rate Study Committee; discuss and possibly approve an amendment to Title 28 TAC §27.605, aboveground storage tanks at retail service stations; discuss matters from the executive director; reports from advisory councils; discuss matters from the public; consider personnel matters; and discussion and possible action regarding future meeting dates and locations.

**Contact:** Jack Woods, 333 Guadalupe Street, Austin, Texas 78767, (512) 322-3550.

**Filed:** December 20, 1991, 2:54 p.m.

TRD-9116271

## Texas Funeral Service Commission

**Tuesday, January 7, 1992, 9 a.m.** The Examinations Committee of the Texas Funeral Service Commission will meet at the Texas Department of Criminal Justice, 8100 Cameron Road, Suite B-600, Austin. According to the agenda summary, the committee will discuss examinations for apprentices.

**Contact:** Larry A. Farrow, 8100 Cameron Road, Austin, Texas 78753, (512) 834-9992.

**Filed:** December 19, 1991, 11:07 a.m.

TRD-9116137

## Texas Department of Insurance

**Monday, December 23, 1991, 9 a.m.** The State Board of Insurance of the Texas Department of Insurance met at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the com-

plete emergency revised agenda, the board considered a property insurance rate deviation filed by Highlands Underwriters Insurance Company. Deem date: December 25, 1991, and Highlands Insurance Company. Deem date: December 25, 1991. The emergency status was necessary to protect public welfare to allow the Board an opportunity to review and approve rate deviation before the filing deems on December 25, 1991.

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** December 20, 1991, 1:40 p.m.

TRD-9116258

**Monday, December 30, 1991, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment to the Articles of Incorporation of First Life Insurance Company, Arlington, increasing the authorized capital stock. Docket Number 11388.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

**Filed:** December 20, 1991, 1:40 p.m.

TRD-9116259

**Monday, December 30, 1991, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Investors Equity Life Holding Company, a Delaware corporation, Investors Equity Life Insurance Company of Hawaii, Ltd., a Hawaii insurance corporation and Crusan Group, Inc., a California corporation, to acquire control of Gulf Atlantic Life Insurance Company, Dallas, pursuant to the provisions of Texas Insurance Code, Article 21.49-1 §5. Docket Number 11390.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

**Filed:** December 20, 1991, 4:46 p.m.

TRD-9116296

**Monday, December 30, 1991, 10 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 consider authorization for publication of proposed new 28 TAC §5.6701 concerning rules and regulations pursuant to Article 5.76-2, §4.08, Texas Insurance Code, establishing practices, policies and procedures for the selection of servicing companies for the Texas Workers' Compensation Insurance Facility on a competitive basis. Consideration of a property insurance rate deviation filed by Preferred Risk Mutual Insurance Company, Deem: January 5, 1992.

**Contact:** Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

**Filed:** December 20, 1991, 2:23 p.m.

TRD-9116267

**Tuesday, December 31, 1991, 9 a.m.** The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 12th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of the proposed plan of merger of Christian Fidelity Life Insurance Company, Waxahachie, into American Security Life Insurance Company, San Antonio, with American Security Life Insurance Company being the survivor and for approval of the restatement with amendments to the Articles of Incorporation of American Security Life Insurance Company, San Antonio, changing the name of the company, providing for the existence of the company, changing the home office of the company, pertaining to the kinds of insurance authorized, increasing the authorized capital stock, providing for option to purchase shares of additional stock, and providing for directors and directors' liability.

**Contact:** Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

**Filed:** December 20, 1991, 1:40 p.m.

TRD-9116260

## Texas Department of Licensing and Regulation

**Tuesday, January 7, 1992, 9 a.m.** The Inspections and Investigations, Manufac-

ture Housing of the Texas Department of Licensing and Regulation will meet at the E.O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the appeal of Wesley A. Stancliff of the denial of a new original document of title pursuant to Statutes, Article 5221f, §8(g)(2) and §19(c)(3), 9100, and 16 TAC Chapter 69.

**Contact:** Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

**Filed:** December 20, 1991, 2:57 p.m.

TRD-9116276

**Friday, January 10, 1992, 1:30 p.m.** The Inspections and Investigations, Air Conditioning of the Texas Department of Licensing and Regulation will meet at the E.O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible issuance of an Air Conditioning and Refrigeration Contractors license for Stephen M. Austin as provided by 16 TAC Chapter 75, §75.20(d).

**Contact:** Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

**Filed:** December 20, 1991, 2:56 p.m.

**Monday, January 13, 1992, 1:30 p.m.** The Inspections and Investigations, Air Conditioning of the Texas Department of Licensing and Regulation will meet at the E.O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for John F. Munoz, Custom Cooling for violation of Statutes, Articles 8861 and 9100.

**Contact:** Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

**Filed:** December 20, 1991, 2:57 p.m.

TRD-9116277

**Thursday, January 16, 1992, 9 a.m.** The Auctioneering Program of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will consider the final adoption of proposed amendments to §§67.1, 67.20, 67.40, and 67.100 and new §§67.21, 67.101 and 67.012 concerning auctioneers.

**Contact:** James D. Brush, P.O. Box 12157, Austin, Texas 78711, (512) 463-7352.

**Filed:** December 20, 1991, 1:50 p.m.

TRD-9116262

**Wednesday, January 22, 1992, 9 a.m.** The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E.O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Elias Carmona, Jr. for violation of Statutes, Articles 6687-9b and 9100.

**Contact:** Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

**Filed:** December 20, 1991, 2:57 p.m.

TRD-9116275

**Thursday, January 23, 1992, 9 a.m.** The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E.O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Joe Boyd, Boyd's Wrecker Service for violation of Statutes, Articles 6687-9b and 9100.

**Contact:** Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

**Filed:** December 20, 1991, 2:56 p.m.

TRD-9116274

**Friday, January 24, 1992, 9 a.m.** The Inspections, Investigations, Air Conditioning of the Texas Department of Licensing and Regulation will meet at the E.O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible issuance of Air Conditioning and Refrigeration Contractors License for Leonard M. Savage as provided by 16 TAC Chapter, §75.20(d).

**Contact:** Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

**Filed:** December 20, 1991, 2:56 p.m.

TRD-9116273

## Public Utility Commission of Texas

**Friday, January 3, 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 divi-

sion will hold a prehearing conference in Docket Number 10731-application of Southwestern Bell Telephone Company to reduce rates for Type 1 and Type 2A Service in the Cellular Mobile Interconnection tariff.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** December 19, 1991, 2:56 p.m.

TRD-9116166

**Tuesday, January 7, 1992, 1:30 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10381-Southwestern Bell Telephone Company's statement of intent to change and restructure the rates for direct assistance.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** December 19, 1991, 2:57 p.m.

TRD-9116167

**Wednesday, January 8, 1992, 1:30 p.m.** (rescheduled from December 31, 1991). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. The division will hold a prehearing conference in Docket Number 10787-application of Jasper-Newton Electric Cooperative, Inc. for authority to change rates.

**Contact:** Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** December 20, 1991, 4:23 p.m.

TRD-9116293

## Railroad Commission of Texas

**Thursday, January 2, 1992, 9:30 a.m.** The Railroad Commission of Texas will meet at 1701 North Congress Avenue, 12th Floor Conference Room, Austin. According to the complete agenda, the commission will conduct a strategic planning worksession in connection with the requirements of House Bill 2009 relating to strategic planning for the agency. The meeting will continue until completion.

**Contact:** Art Martinez, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7276.

**Filed:** December 20, 1991, 11:45 a.m.

TRD-9116222

**Monday, January 6, 1992, 9:30 a.m.** The Commission will meet at the William B. Travis Building, 1701 North Congress Avenue, 12th Floor Conference Room, (12-

126), Austin. Agendas follow.

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

**Contact:** Bob Kmetz, P.O. Box 12967, Austin, Texas 78711, (512) 463-7251.

**Filed:** December 20, 1991, 11:45 a.m.

TRD-9116223

The commission will consider and act on the Personnel Division Director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

**Contact:** Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-7187.

**Filed:** December 20, 1991, 11:45 a.m.

TRD-9116224

The commission will consider and act on the Office of the Executive Director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. Consideration of appointment, reassignment and/or termination of various positions, including division directors. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel, and pending litigation.

**Contact:** Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7274.

**Filed:** December 20, 1991, 11:45 p.m.

TRD-9116225

The commission will consider and act on the division director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

**Contact:** Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

**Filed:** December 20, 1991, 11:46 a.m.

TRD-9116226

The commission will consider various matters within the jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including, but not limited to,

scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act, including to receive legal advice regarding pending and/or contemplated litigation.

**Contact:** Walter H. Washington, Jr., P.O. Box 12967, Austin, Texas 78711, (512) 463-7274.

**Filed:** December 20, 1991, 11:46 a.m.

TRD-9116227

The commission will consider category determination under sections 102(c)(1) (B), 102(c)(1)(C), 103, 107 and 108 of the Natural Gas Policy Act of 1978.

**Contact:** Margie Osborn, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6755.

**Filed:** December 20, 1991, 11:44 a.m.

TRD-9116218

The commission will consider and act on the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters.

**Contact:** Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

**Filed:** December 20, 1991, 11:44 a.m.

TRD-9116219

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Brian Schaible, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6710.

**Filed:** December 20, 1991, 11:44 a.m.

TRD-9116220

The commission will consider and act on the Investigation Division Director's report on division administration, investigations, budget, and personnel matters.

**Contact:** Walter H. Washington, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

**Filed:** December 20, 1991, 11:45 a.m.

TRD-9116221

## Stephen F. Austin State University

**Monday, January 6, 1992, 9 a.m.** The Board of Regents of Stephen F. Austin State University will meet at the Stephen F. Austin State Campus, Austin Building, Room 307, Nacogdoches. According to the

complete agenda, the board will discuss search process for selection of university president; discuss status of other administrative searches; and discuss approval of severance package for Dr. Donald E. Bowen.

**Contact:** L. Kelly Jones, 440 North Center, Arlington, Texas 76011, (817) 265-0440.

**Filed:** December 20, 1991, 4:35 p.m.

TRD-9116295

### **Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association**

**Monday, December 30, 1991, 1 p.m.** The Board of Directors of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association will meet at the William P. Hobby Building, Tower I, 333 Guadalupe Street, Austin. According to the agenda summary, the board will consider and possibly approve: assessments in connection with Executive Life Insurance Company; plan of operation for the association; approve plans and methods to carry out association duties and responsibilities pending employment of an executive director, including contract with the commissioner, as receiver; adopt resolution authorizing the Secretary/Treasurer to execute bank agreements concerning various accounts; meet in executive session to consider personnel matters, including search for executive director and staff; and set date for next meeting.

**Contact:** Gene Brodhead, 333 Guadalupe Street, Austin, Texas 78701, (512) 463-8069.

**Filed:** December 20, 1991, 4:21 p.m.

TRD-9116291

### **Texas Water Commission**

**Thursday, December 19, 1991, 3:15 p.m.** The Texas Water Commission held an emergency meeting at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission took various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary due to an imminent threat to public health and safety.

**Contact:** Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** December 19, 1991, 1:04 p.m.

TRD-9116143

**Monday, December 23, 1991, 10:30 a.m.** The Texas Water Commission held an emergency meeting at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission considered the executive director's request for an emergency order authorizing Atochem North America, Inc.'s Bryan facility to take certain actions to allow it to discharge treated water from the overflow point of Finfeather Lake to an unnamed tributary of Country Club Lake. The emergency status was necessary due to an imminent threat to public health and safety.

**Contact:** Gloria A. Vasquez, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

**Filed:** December 20, 1991, 5:12 p.m.

TRD-9116297

**Thursday, January 9, 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 consider: WWDB-92-1, John Kraatz, License Number 1986W; WWDB-92-2, Clay Earle, License Number 2539W; WWDB-92-3, Dickey Long, License Number 1462W; WWDB-92-4, Larry Bisidas, License Number 1645W; and WWDB-91-33, John W. Kraatz, Jr., License Number 1986W (continuation).

**Contact:** Larry Persky, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

**Filed:** December 20, 1991, 4:19 p.m.

TRD-9116289

### **Texas Water Well Drillers Board**

**Friday, January 10, 1992, 9:30 a.m.** The Texas Water Well Drillers Board will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the board will consider the approval of the minutes of its November 7, and November 21 meetings; consider whether to set the following complaints for a formal public hearing before the board of appropriate legal action; Jaime Perkins, Buzz Zigler, Craig Cobb, Morris Robinson, Tim Robinson and James Smith; consider the certification of applicants for registration; consider the applications for driller-trainee registration; and consider staff reports.

**Contact:** Larry Persky, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

**Filed:** December 20, 1991, 4:19 p.m.

TRD-9116290

### **Texas Workers' Compensation Insurance Facility**

**Monday, December 30, 1991, 10 a.m.** The Governing Committee of the Texas Workers' Compensation Insurance Facility will meet at the Offices of CNA Insurance Company, 6565 West Loop South #300, Bellaire. According to the complete agenda, the committee will meet in executive session to discuss personnel matters and pending legal matters.

**Contact:** Miles L. Mathews, 8303 MoPac North, #310, Austin, Texas 78759, (512) 345-1222.

**Filed:** December 19, 1991, 4:21 p.m.

TRD-9116180

### **Regional Meetings**

#### **Meetings Filed December 19, 1991**

**The Kendall Appraisal District Appraisal Review Board** will meet at 207 East San Antonio Street, Boerne, December 30, 1991, at 9 a.m. Information may be obtained from J. B. Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9116138.

**The Lamb County Appraisal District Board of Directors** will meet at 330 Phelps Avenue, Littlefield, January 16, 1992, at 6 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 79339-0552, (806) 385-6474. TRD-9116161.

**The Lamb County Appraisal District Agricultural Appraisal Advisory Board** will meet at 330 Phelps Avenue, Littlefield, January 23, 1992, at 7 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 552, Littlefield, Texas 79339-0552, (806) 385-6474. TRD-9116162.

**The Parmer County Appraisal District Board of Directors** will meet at 305 Third Street, Bovina, January 9, 1992, at 7 p.m. Information may be obtained from Ron Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9116160.

**The 222nd Judicial District Community Justice Council** will meet at the District Courtroom, Deaf Smith County Courthouse, Hereford, January 14, 1992, at 7 p.m. Information may be obtained from Larry Sheffield, Room 204, Courthouse, Hereford, Texas 79045, (806) 364-3791. TRD-9116139.

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**Meetings Filed December 20,  
1991**

**The Austin-Travis County Mental Health and Mental Retardation Center** Finance and Control Committee met at 1430 Collier Street, Austin, December 23, 1991, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9116261.

**The Central Appraisal District of Johnson County** Board of Directors will meet at 109 North Main Street, Suite 201, Room 202, Cleburne, December 27, 1991, at 9 a.m. Information may be obtained from Priscilla A. Bunch, 109 North Main Street, Cleburne, Texas 76031, (817) 645-3987. TRD-9116185.

**The Dallas Area Rapid Transit Corporate Location Ad Hoc Committee** met at the DART Office, 601 Pacific Avenue, Executive Conference Room, Dallas, December 23, 1991, at 3 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9116294.

**The North Plains Groundwater Conservation District** Board of Directors will meet at the District Office, 603 East First Street, Dumas, December 30, 1991, at 10 a.m. Information may be obtained from Richard Bowers, P. O. Box 795, Dumas, Texas 79029, (806) 935-6401. TRD-9116266.

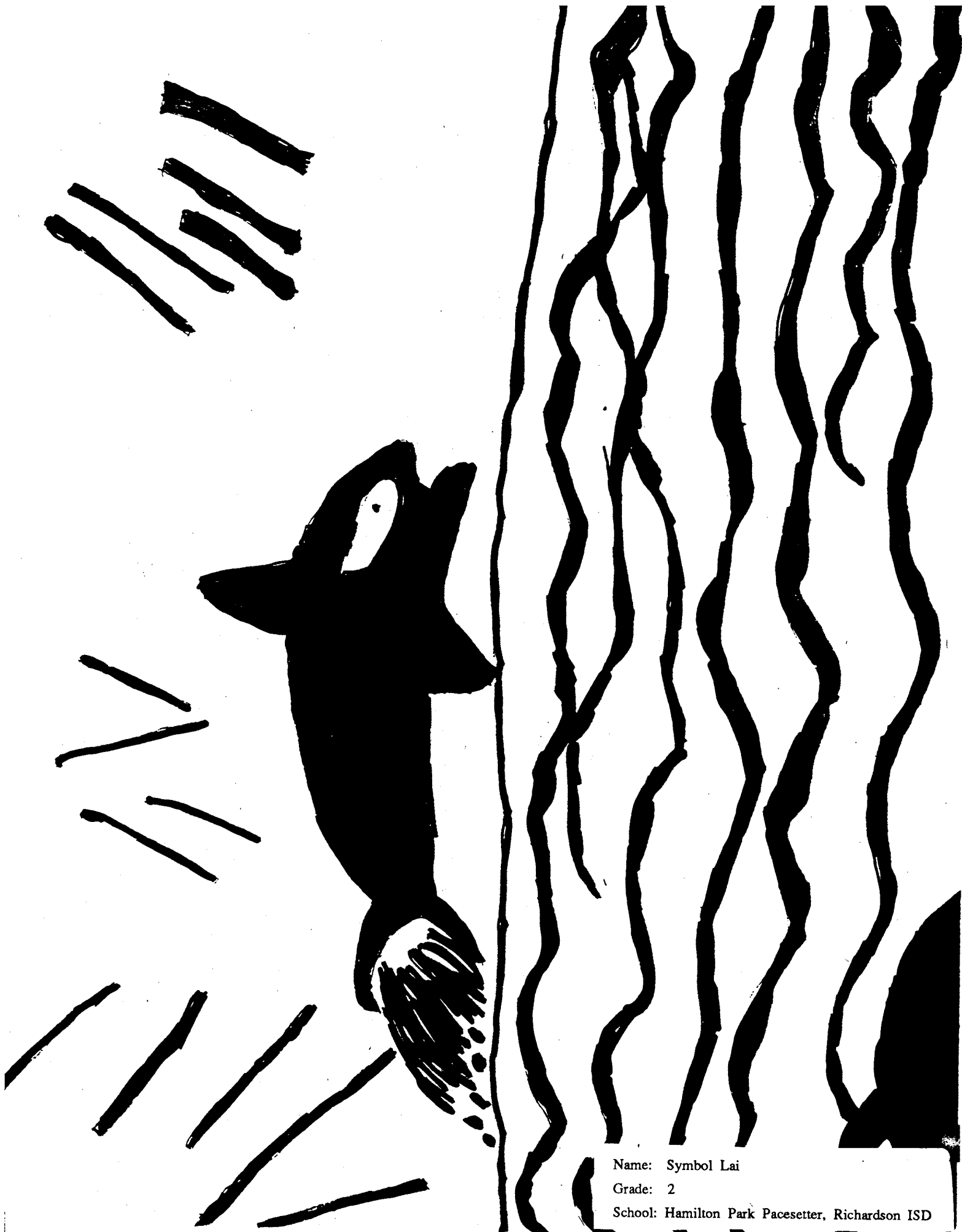
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**Meetings Filed December 23,  
1991**

**The Central Counties Center for Mental Health and Mental Retardation Services**

Board of Trustees will meet at 304 South 22nd Street, Temple, December 27, 1991, at 11 a.m. Information may be obtained from Robert E. Luckey, Ph.D., 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841. TRD-9116300.

**The San Patricio County Appraisal District** Board of Directors will meet at 1146 East Market, Sinton, January 9, 1992, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9116301.

**The South Orient Rural Rail Transportation District** Board of Directors will meet at the Upton County Courthouse, Commissioner's Courtroom, 205 East Tenth Street, Rankin, December 27, 1991, at 1:30 p.m. Information may be obtained from Coleta Stewart, P.O. Box 907, Mertzon, Texas 76941, (915) 835-7101. TRD-9116302.



Name: Symbol Lai

Grade: 2

School: Hamilton Park Pacesetter, Richardson ISD

# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Department on Aging

### Memorandum Of Agreement between Texas Department Of Human Services and Texas Department On Aging

**Section A: Introduction and Purpose.** The Texas Department on Aging's "Options for Independent Living" (Options) program was established by the 71st Legislature, with enactment of Senate Bill 482, amended by Senate Bill 1249 in the 72nd Legislature. Its purpose is to help elderly persons remain at home despite limited self-care capacities and to prevent institutionalization through provision of short-term support services to the purposes of: restoring functional capacities after illness or hospitalization; and educating and preparing elderly persons and their caregivers to provide self-care.

Through House Bill 1 (the Appropriations Act of FY 1992-1993), the 72nd Legislature appropriated general revenue funds to TDoA for the Options program and, in Rider 8 stated that: "It is the intent of the Legislature that, in establishing the Options for Independent Living program, the Texas Department on Aging will maintain a Memorandum of Agreement with the Texas Department of Human Services which specifies that there will be no duplication of services to elderly clients served by the "Options" program and elderly clients served by the Texas Department of Human Services."

In accordance with the requirements of the Appropriations Act of FY 1992-1993, enacted by the 72nd Legislature and signed by the Governor, the Texas Department of Human Services (TDHS) and the Texas Department on Aging (TDoA) hereby enter into this Memorandum of Agreement, concerning TDoA's Options for Independent Living Program.

**Section B: Location of Options Projects and Services Provided.** The terms of this Memorandum of Agreement shall apply in those areas of the state in which TDoA, through Area Agencies on Aging (AAAs), has established Options projects. In FY 1992-1993, Options projects are located within, and serve one or more counties within the service areas of the following AAAs: Alamo, Central Texas, Concho Valley, East Texas, Houston-Galveston, Lower Rio Grande Valley, North Central Texas, North Texas, Panhandle, South East Texas, South Plains, and Texoma. This agreement will apply to any additional Option Projects established by TDoA in FY 1992-1993.

Each Options project is responsible for providing or arranging for the following services: case management, homemaker (including personal care), residential repair and modification, benefits counseling, respite care, emergency response, education and training for caregivers, home-delivered meals, transportation, and other available public and private services appropriate to the elderly per-

son's needs identified by the case manager and client through the assessment and care planning process.

**Section C: Persons to be Served Through Options.** As stated in 40 TAC §292.7, services of the Options program will be available to persons age 60 and over whose income or resources disqualify them for entitlement programs, yet are insufficient to purchase needed support services. Priority will be given to those who: have recently suffered a major illness or health care crisis or have recently been hospitalized; live in rural areas; have insufficient caregiver support; have a mild to moderate impairment or a temporary severe impairment; and are in great economic or social need, with particular attention to low-income minority older persons.

**Section D: Coordination and Referrals.** A person who is eligible for TDHS Community Care services may not receive the same or similar service(s) from the Options program unless the person is on a waiting list for that service from TDHS and unless the person is in one or more of the priority criteria described in Section C. However, a person may receive Options services until TDHS services can begin. In no instance may a person receive the same or similar service from each agency at the same time.

TDHS and TDoA case managers will coordinate with each other to ensure that a person does not receive emergency response services, home delivered meals, in-home attendant services, or adult day care services from each agency at the same time. Should duplication be discovered, the Options service(s) will be terminated as quickly as possible in order to eliminate the duplication. The client and/or family will be informed of the reasons for the change.

On the same day one agency terminates services or denies an application for services, that agency will assess the need for services available from the other agency. If the person is in need of services from the other agency, a written referral for services will be made to the other agency.

The referral will include, if already completed, the referring agency's intake, application, assessment, and authorization to release information forms.

To reduce duplication in certifying a person's eligibility for services, upon receipt of a referral, the receiving agency may use, if available, the following information from the other agency: intake; application for services; and authorization to furnish client's information forms.

The receiving agency may also transpose the other agency's assessment information onto its assessment instrument.

TDHS will refer a person on a waiting list for TDHS Community Care services to Options if the person appears to be in Options priority group for services. TDHS will inform Options that the person is on the TDHS waiting list for service.



The TDHS case manager will inform the person on the waiting list that although TDHS requires no copayment for the service the person is requesting Options may ask for a copayment. Receipt of Options services will not affect a person's status on the TDHS waiting list.

TDHS retains the primary case management function for individuals on the waiting list for TDHS Community Care services even if the person is receiving the same or similar service through the Options program. TDHS will authorize payment for TDHS service once the person is released from the waiting list, but not before the Options service is ended.

The TDHS and Options case managers will coordinate the starting and ending dates for their respective services to avoid overlap or breaks in service. The TDHS case manager will document the agreed-upon starting and ending dates and send this information to Options.

TDHS will not consider Options services in application of TDHS' unmet need policy; however, in no instance may a person receive the same or similar service from each agency at the same time.

#### **Section E: Confidentiality of Information.**

Before a referral is made, the agency making the referral will obtain a release form, signed by the individual requesting services (or his or her guardian), which gives the individual's permission for the agency to release information concerning his or her case. The case manager will explain to the individual that the purpose of the release is solely to assist the individual to obtain services from the other agency.

Each agency will maintain confidentiality of the information received from the other agency except as required to arrange and deliver services.

TDaA will obtain, in writing, from each Area on Aging the AAA's and its contractors-agreement to protect the confidentiality of information concerning the individuals it serves.

#### **Section F: Effective Date and Duration of Agreement.**

This Memorandum of Agreement shall be effective upon approval by the board of the Texas Department of Human Services and the Texas Board on Aging, and will remain in effect through August 31, 1993.

Issued in Austin, Texas, on December 17, 1991.

TRD-9116130      Polly Sowell  
Executive Director  
Texas Department on Aging

Filed: December 18, 1991

For further information, please call: (512) 444-2727

## **Office of the Attorney General of Texas**

### **Request for Proposal**

In accordance with the provisions of Title IV-D of the federal Social Security Act of 1935 and Chapter 76 of the Texas Human Resources Code, the Office of the Attorney General of Texas requests proposals for scientifically acceptable testing in cases to establish paternity.

**Description of Services.** Offerors must perform tests using methodologies and laboratory practices which conform

to the requirements of the Texas Family Code, §13.02. That provision permits a court to order parents, alleged parents, and child(ren) to submit to the taking of blood, body fluid, or tissue samples for the purposes of scientifically accepted paternity testing. The tests performed must be sufficient to ascertain the possibility of alleged parent's paternity and shall be of a nature so as to exclude at least 95% of the relevant gender group of the alleged parent from the possibility of parentage. Such an exclusion must be documented by a least two independent scientific exclusionary factors. Vendors will be responsible for collecting samples, performing testing, and delivering written reports prepared under oath by experts concerning the tests performed on the samples collected.

Vendors must be prepared to furnish such experts for testimony in contested cases. Vendors must comply with requests and order for the discovery of information as are necessary to support the conclusions and verifications presented. Vendors also must prepare other reports required for management purposes by the Attorney General.

Vendors must offer consultation with, and training for, Attorney General's staff concerning the tests performed and their interpretation and use in proceedings to establish paternity.

Vendors may submit an offer either to perform services throughout the state or an offer only to perform services in a limited geographic area of the state. Additionally, vendors may offer to perform the requested services in both intra- and interstate cases or only in those cases where the child(ren), parent, and alleged parent(s) all reside in Texas. An offeror may submit a proposal to perform a limited number of tests. The Attorney General contemplates making multiple awards.

**Duration of Contract.** Services will begin upon execution of a contract between the selected offeror(s) and the Office of the Attorney General. The award(s) will be for an initial period concluding on August 31, 1993; an award may be renewed for a second period ending on August 31, 1995.

**Conditions.** A full discussion of the terms and conditions is contained in the Request for Proposals available from the Attorney General.

**Obtaining RFP Information.** RFP information packets will be available beginning on or after the date of this issue of the *Texas Register*. Requests for an RFP packet must be in writing and sent by either overnight courier service or hand delivered to the Office of the Attorney General of Texas, Child Support Enforcement Division, 210 Barton Springs Road, Room 226, Austin, Texas 78704. No other method for requesting an RFP packet is acceptable.

Persons obtaining an RFP Packet in the manner specified by the Attorney General will be designated as "Registered Offerors." Registered Offerors will receive all communications from the Attorney General concerning the RFP, including any answers to any written questions accepted by the Attorney General in accordance with the RFP. Additionally, proposals will be accepted only from registered offerors.

**Contents of Request for RFP Packet.** Each request for an RFP information package must include the name, mailing address, and telephone number of the entity or person requesting the package. The request must also identify a specific person designated by the requestor to receive communications from the Attorney General concerning the RFP.

**Closing Date.** The Attorney General will accept proposals only beginning on the 20th day from the date of this issue of the *Texas Register*.

Proposals must be received by the Office of the Attorney General no later than the 45th-day following the date of this issue of the *Texas Register*.

**Evaluation and selection.** Factors utilized in the evaluation process are outlined in the RFP. Final selection will be made by the Attorney General.

The offeror(s) selected must execute a contract with the Attorney General in accordance with state law. A specimen contract is included in the RFP packet. The contract between the Attorney General and the selected offeror(s) will be subject to approval by the United States Department of Health and Human Services.

The Attorney General reserves the right to reject any and all proposals. No oral proposals will be accepted.

Issued in Austin, Texas, on December 19, 1991.

TRD-9116158      Will Pryor  
First Assistant Attorney General  
Office of the Attorney General

Filed: December 19, 1991

For further information, please call: (512) 463-2040

## State Banking Board

### Notice of Hearing

The Hearing Officer of the State Banking Board will conduct a hearing on Tuesday, January 28, 1992, at 2601 North Lamar Boulevard, Austin, on the bank charter application for BOK-Texas Trust Company, Dallas, Dallas County.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, State Banking Department, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Issued in Austin, Texas, on December 17, 1991.

TRD-9116078      William F. Aldridge  
Director of Corporate Activities  
State Banking Board

Filed: December 18, 1991

For further information, please call: (512) 475-1317

## Texas Department of Commerce

### Cost Allocation Plan

This request for proposal is filed pursuant to Texas Civil Statutes, Article 6252-11c.

The Texas Department of Commerce (Commerce) requests offers from qualified companies or organizations for consulting services to prepare the final fiscal year 1991 Cost Allocation Plan based on actual expenditures for the fiscal year ending August 31, 1991, and a provisional fiscal year 1992 cost allocation plan based on its new program structure.

During fiscal year 1991, Commerce administered millions of dollars of federal funds for the Job Training Partnership Act (JTPA) and the Community Development Block Grant

(CDBG) programs. Commerce recouped its indirect costs from these programs based on provisional rates approved by the United States Department of Labor (D.O.L.). Beginning in fiscal year 1992, the Community Development Block Grant program was transferred to the Texas Department of Housing and Community Affairs and the Job Training Partnership Act program is Commerce's only remaining federal grant program. This transfer altered the organizational structure of the department.

Currently, the department has a policy board, two ancillary boards, and the following operating divisions: Executive Office, Work Force, Business Development, Tourism, Quality Assurance, Legal, Data Services, Human Resources, Intergovernmental Relations, Research and Planning, Administration, and Communications.

The offerer selected to prepare the Cost Allocation Plans must demonstrate the necessary qualifications and experience listed in the Qualifications section and will be required to perform the various services and generate the reports listed in the Scope of Services section. The acceptance of an offer by Commerce, made in response to this request, will be based on demonstrated competence, knowledge and qualifications of the offerer and reasonableness of the offeror's proposed fee, in addition to other factors described below.

**Scope of Services.** The successful candidate will be required to develop detailed cost allocation plans, and render the following services and reports: identify the sources of financial information to be used; classify all Commerce divisions, commissions and boards; inventory all Federal and other programs administered by Commerce; determine administrative departments; determine allocation bases for allocating services to benefiting divisions; develop allocation data for each allocation base; prepare cost allocation worksheet based upon actual expenditures for FY 1991; prepare cost allocation worksheet for FY 1992; summarize costs by benefiting division; collect cost data for all of the programs included in the inventory of Federal programs and other programs administered by Commerce; determine indirect cost rates throughout Commerce on an annual basis; formalize plans and present to the Department of Labor; negotiate final plans and secure approval from the Department of Labor; provide indoctrination session for assigned personnel.

Consultant staff will accumulate and analyze all data that is required. Commerce is not expected to provide any staff time to the consultant; no time sheets will be required and no accounting methods or records need be changed. Both plans must be completed and submitted to the D.O.L. no later than February 28, 1992.

**Qualifications.** Each company or organization submitting an offer must present evidence or otherwise demonstrate to the satisfaction of Commerce that such entity; has experience to prepare and negotiate this type of Cost Allocation Plan; has a thorough understanding of Cost Allocation issues and preparation of state agency's Cost Allocation Plans; can execute such a proposition within the required time frame.

**Instructions.** Please provide evidence of the above qualifications and a proposal which includes: a detailed description of the plan of action to accomplish the requirements described in the "Scope of Services;" resume on each staff who will be assigned to work with Commerce; the proposed total amount for providing the desired services; the geographical location of offeror's principal place of business and/or office where services are to be performed.

**Conflict of Interest.** The offeror shall identify any officer or employee of Commerce who has a financial interest, directly or indirectly, in the offeror's firm or who is related within the second degree of consanguinity (blood) or affinity (marriage) to a person having such a financial interest, together with a full disclosure of the nature of such financial interest, and the relationship if applicable. If there is no such person, the offeror shall so state in the proposal submitted in response to this Request for Proposal.

**Prior State Employment.** The offeror shall disclose whether any of the personnel whom the offeror proposes to use in performing the requested services have been employed by an agency of the State of Texas at any time during the two years proceeding the date of submission of this proposal. If such employment has existed, the offeror shall disclose the agency and the nature of the previous employment with such agency; the date of termination of the employment; and the annual rate of compensation for the employment at the time of termination. If such employment has not existed then the offeror shall so state in the proposal.

Your response must be received no later than 5 p.m., January 27, 1992. Responses received after this date and time will not be considered. We anticipate entering into the resulting contract on or about January 29, 1992.

Commerce reserves the right to accept or reject any or all offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any offer received. Selected candidates

may be asked to make oral presentations to Commerce. Commerce is under no legal obligation to enter into a contract with any offer on the basis of this request and intends any material provided herein only as means of identifying the scope of services requested.

The consultant services desired by Commerce relates to a service previously performed by the private consultant David M. Griffith and Associates, LTD., and Commerce intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted.

The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. Please hand deliver your responses to Steve Hudson, Texas Department of Commerce, 816 Congress Avenue, Suite 800, Austin, Texas 78701, or address your responses to Steve Hudson, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, telephone (512) 320-9655.

Issued in Austin, Texas, on December 18, 1991.

TRD-9116133

Cathy Bonner  
Executive Director  
Texas Department of Commerce

Filed: December 19, 1991

For further information, please call: (512) 320-9666

## 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, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer <sup>(1)</sup>/Agricultural/ Commercial <sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/23/91-12/29/91	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	01/01/92-01/31/92	10.00%	10.00%

<sup>(1)</sup>Credit for personal, family or household use. <sup>(2)</sup>Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on December 16, 1991.

TRD-9116077

Al Endsley  
Consumer Credit Commissioner

Filed: December 18, 1991

For further information, please call: (512) 479-1280

## Employees Retirement System of Texas Request for Proposal

In accordance with the Texas Insurance Code, Article 3.50-2, §4, as amended, the Employees Retirement System of Texas (ERS) announces a Request for Proposal (RFP)

for Health Maintenance Organizations (HMOs) to provide prepaid health benefits for the Texas Employees Uniform Group Insurance Program (UGIP). Such proposals will provide benefits for the UGIP during the next fiscal year 1993, beginning September 1, 1992. Proposals will provide the level of benefits as required in the RFP.

Health Maintenance Organizations wishing to respond to this request must be Federally approved, state approved, must have been in operation for at least 12 months prior to February 3, 1992, and have at least 25 state employees within the service area.

The RFP is available upon request from the Employees Retirement System of Texas.

The deadline for receipt of the proposals in response to this request will be 4 p.m. on February 3, 1992.

The ERS reserves the right to accept or reject any proposals submitted. The ERS is under no legal requirement to execute a resulting contract on the basis of this advertisement.

The ERS will base its choice of HMOs on demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria.

This RFP does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interest of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP instructions, please contact James W. Sarver, Employees Retirement System of Texas, Group Insurance Division, 18th and Brazos, P.O. Box 13207, Austin, Texas 78711-3207, (512) 867-3217.

Issued in Austin, Texas, on December 19, 1991.

TRD-9116159 Charles D. Travis  
Executive Director  
Employees Retirement System of Texas

Filed: December 19, 1991

For further information, please call: (512) 867-3336

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## Texas Department of Health

### State and Local Funds Medicaid Certification Request for Proposals

**Purpose.** Under authority of Texas Civil Statutes, Article 6252-11c, the Texas Department of Health (TDH) is requesting offers from prospective consultants for the project described below. The issuance of a Request for Proposal (RFP) is for assistance to a newly established Federal Funds Policy Unit responsible for Texas Department of Health Medicaid-related activities.

**Objectives.** The consultant will assist the TDH in meeting the following objectives: development of appropriate methodology for using local health departments' tax funds for federal match; identification of needed changes in internal procedures and determination of accurate costs for services currently provided; establishment of cost-based reimbursement for Title V services; identification of each service being delivered to Medicaid eligibles by TDH, regional, and local health departments, and review opportunities for Medicaid billing or certification of state share for these services; drafting of necessary portions of state plan amendments to be submitted to the state Medicaid agency for expanded Title XIX reimbursement; and identification and elimination of federal and state barriers to Medicaid participation by TDH, including but not limited to provider enrollment, state and local funds certification, client eligibility, and service certification.

**Contact person/RFP instructions.** Detailed specifications will be made available in proposal preparation instructions, which may be obtained on or after December 31, 1991, by submitting a written request to the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Attention: Ms. Carol

Daniels. In order to ensure that all offerors have the same information and instructions concerning the preparation of proposals, all communication between offerors and the TDH prior to the submission of proposals shall be in writing.

**Closing date for receipt of offers.** Written proposals offering to provide the requested consulting services may be hand-delivered between the hours of 8 a.m.- 5 p.m., Monday-Friday, or sent by certified mail to the above address. Proposals must be received by the TDH no later than 5 p.m., January 24, 1992.

**Selection process.** A selection committee composed of member(s) of the appropriate standing committees of the Board of Health and TDH Medicaid-related staff will review proposals submitted by offerors and select a firm. In making the selection, the selection committee will consider: the demonstrated knowledge of Medicaid policy, certification and reimbursement issues; the demonstrated competence, knowledge, and qualifications of each individual who will work on the project, and of the management firm as a whole; the extent to which the proposed approach accomplishes the purpose and specifications of the consultant proposal request; the reasonableness of the proposed cost; and familiarity with the TDH, its public health programs that relate to Medicaid, and awareness of ongoing initiatives within the TDH. When other considerations are equal, a firm whose principal place of business is within the State of Texas, or which will manage the engagement wholly from one of its offices within the State of Texas, will be given preference. Final selection will be made by the selection committee in its sole discretion.

**Project timing and cost.** Contingent upon the negotiation of a contract with the offeror selected, the period of this contract is anticipated to begin no later than February 14, 1992 - August 31, 1992. The firm selected will be required to submit periodic progress reports to the selection committee, according to a schedule and format to be specified by the contract manager. Offers in excess of \$70,000 will not be considered.

**General information.** The TDH reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired. Additional terms and conditions relating to this proposal request will be provided in the proposal preparation instructions. The selection committee intends to use responses hereto as a basis for further negotiation of specific project details with offerors. Issuance of this consultant proposal request creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal.

For further information please call: Ms. Carol Daniels, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, (512) 458-7261.

Issued in Austin, Texas, on December 19, 1991.

TRD-9116136 Robert MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

Filed: December 19, 1991

For further information, please call: (512) 458-7261

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## Texas Department of Human Services 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 91-31, Amendment Number 334. The amendment addresses the advance directive requirements of §4751 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The amendment is effective December 1, 1991. If additional information is needed, please contact Rose Davis, (512) 450-3529.

Issued in Austin, Texas on December 17, 1991.

TRD-9116035      Nancy Murphy  
                         Agency Liaison, Policy and Document  
                         Support  
                         Texas Department of Human Services

Filed: December 17, 1991

For further information, please call: (512) 450-3765

### Request for Proposal

The Texas Department of Human Services announces a request for proposal for improving the registered family home orientation program.

**Description of Services.** The registered family home (RFH) orientation is required for individuals who are planning to provide child care in a family day home. The current orientation covers applicable minimum standards and also provides information which supports and helps applicants establish and maintain the RFH. Proposals are being requested to improve this orientation program. Improvements should include, but are not limited to, enhancing the method of delivery, increasing the options for completing the orientation, and increasing the efficiency of the current program. They should provide for meeting previously identified special needs of the target population. Finally, they should address the requirements for administering the orientation program that is developed. Offerors will be required to use the current curriculum as a basis for developing their own.

**Contact Person.** If you have any questions or would like the request for proposal packet, contact Heidi Reifel at Child Care Licensing Department, 403-W, Texas Department of Human Services, P.O. Box 149030, 701 West 51st Street, Austin, Texas, 78714-9030, (512)450-3258.

**Offeror's Conference.** An Offeror's Conference is scheduled for January 16, 1992, to answer offeror's questions related to the RFP. It will be held at 2 p.m. in 6W at the John H. Winters Building, Texas Department of Human Services, 701 West 51st Street, Austin. All offerors are invited and encouraged to attend.

**Closing Date.** Written proposals must be received by January 31, 1992, at 5 p.m. Send proposals to Cris Ros-Dukler, Child Care Licensing Department, 403-W, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030 or hand deliver to the attention of Cris Ros-Dukler, Child Care Licensing Department, Texas Department of Human Services, 701 West 51st Street, Austin. Proposals received after the deadline will not be eligible for consideration.

**Terms and Amount.** The contract period is scheduled to end August 31, 1992. Total amount of the contract(s) shall not exceed \$260,000.

**Selection and Evaluation.** An evaluation committee composed of people who have expertise and knowledge in the program areas will judge the merits of proposals received. The proposals will be reviewed to determine if they meet all minimum requirements specified in the RFP. There will also be a technical proposal review during which time the beneficial impact of the proposal, program design, development plans, and staffing/management will be evaluated. A cost review will be conducted for those proposals with the highest technical scores. The cost proposal will be scored according to the reasonableness of total cost(s) to the level and quantity of projected services.

Issued in Austin, Texas, on December 20, 1991.

TRD-9116264      Nancy Murphy  
                         Agency Liaison, Policy and Document  
                         Support  
                         Texas Department of Human Services

Filed December 20, 1991

For further information, please call: (512) 450-3765

### Department of Information Resources Consultant Proposal Request

Under the provision of Texas Civil Statutes, Article 6252-11c, the Department of Information Resources (DIR) is currently seeking proposals from private consultants to provide technical advice and counsel to the Geographic Information Planning Council (GIPC) which has been chartered by the DIR in preparing a need analysis study and business plan for the coordinated development of geographic information data layers. Any qualified private consulting firm is invited to submit a proposal for this analysis. The closing date for receiving offers for each services is 5 p.m. on January 27, 1992. Consultant proposals will be evaluated and a contract awarded based on procedures set forth in Professional Services Procurement Act, Texas Civil Statutes, Article 664-4.

The GIPC is charged with coordinating the long-term, geographic data development activities within state agencies. The GIPC will adopt a business plan to integrate the agencies activities. In order to prepare such a plan, interagency needs must be assessed, custodial agencies and accuracy requirements must be identified. Therefore, this consultant proposal request was developed to solicit a consultant with following required expertise: recognized technical expertise in Geographic Information Systems systems design and needs analysis; experience in inter-organizational needs analysis for geographic information systems; familiarity with federal data development programs and initiatives.

The expected period of the engagement is anticipated to be approximately six months.

The proposal should comply with the prescribed format detailed in the Request for Proposal. The proposal will include an executive summary of approach, effectiveness of approach, and cost estimate, a description of how the tasks will be performed, the format of specified deliverables and interview instruments, a report of financial condition, a description of personnel resources to be applied to the project, a total project cost estimate, and a list of

user contacts. Each reply should also include a roster of all state agencies within the state of Texas for whom the consultant has performed similar services within the last five years.

DIR solicits proposals from experienced consultants who will be evaluated on the basis of qualifications, demonstrated experience, and competence. Evaluation criteria and percentages are described in the Request for Proposal. DIR reserves the right to reject any or all bids, to waive any or all formalities, and to make an award which, in the judgment of GIPC and the DIR best meets the needs of the State of Texas.

A pre-bid conference will be conducted on January 10, 1992, at 10 a.m. at Department of Information Resources, 300 West 15th Street, Suite 1300, Austin, Texas 78711.

Proposals should be directed to and copies of the Request for Proposal may be requested from Lorraine Styryak, GIS Coordinator, Department of Information Resources, P.O. Box 13564, Austin, Texas 78711-3564, (512) 475-4723.

Issued in Austin, Texas, on December 18, 1991.

TRD-9116120      John M. Hawkins  
Executive Assistant  
Department of Information Resources

Filed: December 18, 1991

For further information, please call: (512) 475-4714

## Legislative Budget Board Budget Execution Proposals

Budget Execution Proposal by the Legislative Budget Board relating to appropriations to the Texas College of Osteopathic Medicine, finding that an emergency exists, and proposing that part of the funds appropriated be used for a purpose different from the purpose for which the appropriation was made.

**Section 1.** House Bill 1, Acts of the Seventy-second Legislature, First Called Session, 1991, appropriates General Revenue Funds to the Texas College of Osteopathic Medicine (TCOM) and, by rider, designates a certain amount as a Capital Budget Item for "Acquisition of Information Resource Technologies".

**Section 2.** It was the intent of the Legislature that \$377,000 of the funds designated for "Acquisition of Information Resource Technologies" be used for salaries and operating expenses rather than capital outlay.

**Section 3.** The Legislative Budget Board finds that unless funds are made available for salaries and operating expenses, the project cannot be completed and therefore, an emergency exists.

**Section 4.** Pursuant to Chapter 317, Government Code, the Legislative Budget Board proposes that, out of those funds designated as a Capital Budget Item and described "Acquisition of Information Resource Technologies", TCOM be authorized to use \$377,000 for salaries and operating expenses.

Issued in Austin, Texas, on November 18, 1991.

TRD-9116200      Jim Oliver  
Director  
Legislative Budget Board

Filed: December 20, 1991

For further information, please call: (512) 463-1166

Budget Execution Proposal by the Legislative Budget Board relating to appropriations to the Texas Commission on Alcohol and Drug Abuse, finding that an emergency exists, and proposing that part of the funds appropriated be used for a purpose different from the purpose for which the appropriation was made.

**Section 1.** House Bill 1, Acts of the Seventy-second Legislature, First Called Session, 1991, appropriates federal funds, including Alcohol, Drug Abuse, and Mental Health Block Grant funds, to the Texas Commission on Alcohol and Drug Abuse (TCADA).

**Section 2.** House Bill 93, Acts of the Seventy-second Legislature, Second Called Session, 1991, in Section 22.01(c) directs that block grant funds received by TCADA in excess \$60.5 million in each year of the 1992-93 biennium shall be expended by TCADA only for the purpose of the operation of treatment programming at the substance abuse felony punishment facilities authorized House Bill Number 93 under Section 493.009, Government Code.

**Section 3.** The Legislative Budget Board finds that unless increased funds are made available to TCADA for prevention, intervention, and treatment services, many children and adolescents will be denied those services and therefore, an emergency exists.

**Section 4.** Pursuant to Chapter 317, Government Code, the Legislative Budget Board proposes that during the fiscal year beginning September 1, 1991, TCADA be authorized to use \$1,608,116 of those funds in excess of \$60.5 million from the Alcohol, Drug Abuse, and Mental Health Block Grant for the purpose of providing prevention, intervention, and treatment services.

Issued in Austin, Texas, on November 18, 1991.

TRD-9116199      Jim Oliver  
Director  
Legislative Budget Board

Filed: December 20, 1991

For further information, please call: (512) 463-1166

The Budget Execution Proposal by the Legislative Budget Board relating to appropriations to the Texas Agricultural Experiment Station, finding that an emergency exists, and proposing that funds be transferred to the Texas Veterinary Medical Diagnostic Laboratory.

**Section 1.** Senate Bill Number 254, Acts of the Seventy-second Legislature, Regular Session, 1991, transferred responsibility for the Pullorum Disease and Fowl Typhoid Control Program from the Texas Agricultural Experiment Station to the Texas Veterinary Medical Diagnostic Laboratory. However, the General Appropriations Act for the 1992-1993 Biennium provides funding for the program (\$443,451 from General Revenue) in the experiment station rather than the diagnostic laboratory.

**Section 2.** The Legislative Budget Board finds that the intent of the legislature was to provide funding for the program in accordance with the transfer of responsibility accomplished by Senate Bill Number 254, and an emergency exists.

**Section 3.** Pursuant to Chapter 317, Government Code, the Legislative Budget Board proposes that on the effective date of this Budget Execution Proposal, the Comptroller of Public Accounts shall determine the amount of the unobligated balance in funds appropriated to the Texas

A&M Agricultural Experiment Station and designated for the Pullorum Disease and Fowl Typhoid Control Program and shall transfer those balances to the Texas Veterinary Medical Diagnostic Laboratory to be used for the same purpose.

Issued in Austin, Texas, on November 18, 1991.

TRD-9116201      Jim Oliver  
Director  
Legislative Budget Board

Filed: December 20, 1991

For further information, please call: (512) 463-1166

## Texas State Library and Archives Commission

### Request for Proposal

The Texas State Library and Archives Commission, under authority of the Government Code, Chapter 441, §441.006, announces a request for proposal.

**Description of Services.** The Texas State Library and Archives Commission (Library) solicits proposals to provide internal audit services to the Library. Services will include a written risk assessment of all the major systems and controls of the Library; a proposed internal audit plan; a proposed internal audit charter and related policies and procedures; and FY 93 internal audits in accordance with internal audit plan as approved by the Library. In addition to written reports, periodic oral reports to the Texas State Library and Archives Commission will be expected. The quantity of work is estimated at not more than 400 hours per year.

**Contact.** To receive a request for proposal, contact Catherine Lee, Manager, Administration Program, Texas State Library, Box 12927, Austin, Texas 78711. (512) 463-5474.

**Professional Qualifications.** For a proposal to be considered it must contain affirmations that the services will be provided by a Certified Public Accountant with at least three years of auditing experience or by a Certified Internal Auditor with at least three years of auditing experience and that the services will be provided in conformance with the Standards for the Professional Practice of Internal Auditing, the Certified Internal Auditor Code of Professional Ethics, and the Statement of Responsibilities of Internal Auditing, as promulgated and periodically revised by the Institute of Internal Auditors. The proposal must further contain affirmation that the auditor(s) does not have a record of substandard audit work.

**Evaluation Process.** Proposals meeting all Professional Qualifications will be evaluated on the merits of the proposed plan of work; qualifications of assigned staff, experience of the staff in internal auditing and state government operations; proposed time line and number of hours required to complete a written risk assessment, a proposed internal audit plan, a proposed internal audit charter and related policies and procedures. Proposals will be awarded up to 80 points for merit, and 20 points based on results of personal interviews. The total cost of the work and terms of engagement will be considered after the proposals have been evaluated for merit and interviewed conducted. The Library reserves the right to accept or

reject any or all proposals submitted and is under no legal requirement to execute any contract on the basis of this notice.

**Deadline for Submission of Proposals.** For consideration two copies of the proposal must be received by the end of the business day (5 p.m.) on February 28, 1992 at Room G-3, the Lorenzo de Zavala Archives and Library Building, 1201 Brazos Street, Austin. The mailing address is Box 12927, Austin, Texas 78711. The envelope containing the proposal should be clearly marked: "Proposal for Internal Audit Services."

Issued in Austin, Texas, on December 16, 1991.

TRD-9116076      Raymond Hitt  
Assistant State Librarian  
Texas State Library and Archives  
Commission

Filed: December 18, 1991

For further information, please call: (512) 463-5440

## Texas Parks and Wildlife Department Correction of Error

The Texas Parks and Wildlife Department submitted adopted amendments to 31 TAC §§57.371-57.375. The rule appeared in the December 13, 1991, issue of the *Texas Register* (16 TexReg 7202).

Section §7.372(d)(2)(F) and (G) should read:

"(F) Number and weight or whole fish or fillets, by species, contained in the shipment except that invoices for shipments of king mackerel and Spanish mackerel are not required to contain the number of fish; and

(G) (No change.)"

Another omission may be found in the preamble, it should read: "The commission disagreed with several comments received specifically dealing with measures that would allow for bulk shipments of king mackerel, Spanish mackerel, cobia, and jewfish since it would limit the ability to track commercially protected finfish in commerce and therefore have the potential to lessen the protection of these resources within the state's waters.

## Southwest Texas State University Program Assessment (Audit)

Southwest Texas State University in San Marcos solicits proposals for an assessment (audit) of its advancement program in preparation for the university's first major fund raising campaign.

The chosen firm will be able to provide: proven track record in assisting university advancement programs prepare for major fund raising campaign, with special emphasis on public universities; client list, including public institutions; experienced personnel with expertise in fund raising, alumni relations, public relations, media relations and placement, foundation and corporation funding, volunteer management, donor relations, and major donor cultivation and solicitation; compatibility with SWT's advancement staff; written proposal which outlines the services to be provided, time table for accomplishing the audit, and cost for such services; on-site services with assigned per-

sonnel to provide the following: examination of the university's total advancement program, including fund raising, alumni relations, news and information services, publications, special events; examination of a variety of decentralized but related programs, including the athletic fund raising program and other departmental programs; recommendations for the most effective use of the resources available to university advancement; recommendations for the improvement of all programs reviewed.

**Contact.** Dr. Leatha Miloy, Vice President for University Advancement, Southwest Texas State University, San Marcos, Texas 78666-4612.

**Closing Date.** January 10, 1992. Contract will be awarded by the Board of Regents, Texas State University System, February 20, 1992, at its meeting in Alpine.

Issued in San Marcos, Texas, on December 16, 1991.

TRD-9116083      Dr. Leatha Miloy  
Vice President for University Advancement  
Southwest Texas State University

Filed: December 18, 1991

For further information, please call: (512) 245-2396

◆      ◆      ◆

Plant Name:  
Plant Operator:  
  
Monthly Average Vol.  
Monthly Average Royalty Vol.  
Age of Plant, per RRC  
Plant Location

Goldsmith  
Phillips Petroleum Co.,  
Bartlesville, Ok.  
2,608,393  
84,632  
March 1951  
Andrews County, Texas

This contract will be for a four month period provided the consultant fulfills all contract requirements and provides the quality of work desired. Any extension of time or additional work rests at the option of the University.

**Contact.** Information concerning the proposal may be obtained from Ms. Cathleen Miller, Assistant to the Director of Budget and Fiscal Policy, The University of Texas System, 702 Colorado Street, Austin, Texas 78701, (512) 499-4700.

**Procedure For Selection of Consultant.** The University intends to use the services of Natural Gas Associates of Colorado, unless a better offer is received from a consultant possessing the necessary qualifications and experience to provide the requested services in a timely manner.

Proposals will be evaluated by U.T. System Administration, and selection will be based on experience, availability, and cost considerations. Interested consultants must provide descriptive detail on their involvement/participation in all of the areas of formal training and experience listed below in order to be considered as a potential contractor for this project. The University of Texas System Administration reserves the sole right to determine the best

## The University of Texas System Consulting Services Request for Proposal

**Consulting Services Request For Proposals.** The University of Texas System Administration, in accordance with the provisions of Texas Civil Statutes, Article 6252-11c, solicits to contract with consultant possessing documented expertise in the field of natural gas plant operations, to review, advise, and make recommendations on revenue generated from natural gas production. The proposal will be based on detailed business review from wellhead to payment to the University. The proposal should take into consideration cash flow, field and gas plant operations, marketing of residue gas and natural gas liquids, as well as the incumbent expenses thereon.

**Project Description.** The consultants selected shall provide the University of Texas System Administration managerial, technical and on-site working operational expertise in the development and implementation of such a review/study program.

This proposal will include the development of a working course syllabus for the continuing training of U.T. System employees in the services specified of the consultant.

The results of the review will be compiled in a formal written report and provided to the University for approval no later than June 30, 1992.

This review/study is to be conducted during the month of March 1992 as follows:

qualified contractor on the basis of these responses. This information must be submitted with your proposal: natural gas plant engineering; gas plant accounting and operational procedures including assessment of the general caliber of operations; natural gas legal issues (gas contracts); litigation of gas plant issues; marketing aspects of natural gas liquids including residue gas pricing, measurement and analysis; prior work for state government land offices; plant material balances and allocations.

A resume fully describing the entity and principals directing the study must accompany the proposal.

**Due Date.** Proposals must be received by the Assistant Director of Business and Fiscal Policy by 5 p.m., January 24, 1992.

Issued in Austin, Texas, on December 18, 1991.

TRD-9116079      Arthur H. Dilly  
Certifying Official  
The University of Texas System

Filed: December 18, 1991

For further information, please call: (512) 499-4402

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## 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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